

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT, IN  
AND FOR DADE COUNTY, FLORIDA

CASE No. 95-5493 et al

COPY

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In the Interest of:

E. R., a child, et al.  
\_\_\_\_\_

3300 N.W. 27th Avenue  
Room 2-4  
Thursday, 9:00 a.m.  
November 13, 1997

VOLUME I

The above-entitled matter came on for  
hearing before The Honorable STEVEN D. ROBINSON,  
presiding Circuit Court Judge, at 3300 Northwest 27th  
Avenue, Miami, Dade County, Florida.

APPEARANCES:ON BEHALF OF FLORIDA DEPARTMENT OF JUVENILE JUSTICE:

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and  
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I N D E X

WITNESSES:                      DIRECT   CROSS   REDIRECT   RECROSS

November 13, 1997:

J [REDACTED] M [REDACTED]

(By Ms. Osborne)                      61

(By Ms. Marvin)                                      117

D [REDACTED] D [REDACTED]

(By Ms. Osborne)                      144

(BY Ms. Marvin)                                      188

(By Ms. Osborne)                                      199

I N D E XE X H I B I T S

DEFENDANT'S:                      FOR ID                      IN EVIDENCE

No. 42 - photo                                      87

A - composite (photos)                                      136

1 (Thereupon, the following proceedings  
2 were had:)

3 THE COURT: For the record, the Respondents  
4 are in the courtroom.

5 The Court will hear opening statements.

6 MR. DAKAN: Judge, before we get started  
7 with opening statements, there are a couple of  
8 things that I think we need to take care of.

9 The very first thing -- it is all right  
10 for you to sit, or would you prefer to stand?

11 THE COURT: Sit.

12 MR. DAKAN: --the very first thing that  
13 we would do is at this time in order to preserve  
14 the record, we would move this Court to dismiss  
15 this action on the basis that the Court does not  
16 have subject matter jurisdiction and we would  
17 simply incorporate or rely on any previous  
18 arguments that have been made to the Court with  
19 respect to that.

20 THE COURT: The Court denies the motion.

21 MR. DAKAN: The second thing, Your Honor,  
22 is we are here to go forward today.

23 We do, however, feel that we are not  
24 adequately prepared to go forward with respect to  
25 a fair hearing and we need the Court's assistance.

1           And would ask the Court for some assistance  
2           in making sure that all sides get to present their  
3           case fully and completely.

4           Here is what our problem is, Judge:

5           There's no, when I talk about this, I don't  
6           want to imply that the Public Defenders have not  
7           done anything, quite to the contrary, given the  
8           express track that we have been on, they have been  
9           quite cooperative.

10          The rally of where we are, Your Honor, is  
11          that at the hearing that we had the last time, Ms.  
12          Osborne indicated to us that what they would be  
13          putting on with the and I quote from Page 84 of  
14          the transcript: "photographs, the public record  
15          documents"; neither of this generally we have any  
16          problem, "the fourteen children that are in  
17          Division 3" and the other children that we would  
18          know Friday afternoon.

19          On Monday morning, we will deem -- I'll let  
20          you know then and Paul DeMuro.

21          Well, that's fine, Judge, but I don't know  
22          if your record shows or has in it, but on Tuesday,  
23          I believe it was, at approximately noon, of this  
24          week, we did receive in accordance with the  
25          Court's orders a defense witness list and a

1 discovery response.

2 Now, included in that, Your Honor, are  
3 approximately five new witnesses.

4 These include L [REDACTED] B [REDACTED], apparently  
5 the mother of L [REDACTED] d B [REDACTED], M [REDACTED] C [REDACTED],  
6 mother of L [REDACTED] C [REDACTED], B [REDACTED] P [REDACTED], mother of  
7 W [REDACTED] M [REDACTED], and Ingrid Cheves, Gwynne Pelger,  
8 P-e-l-g-e-r, and so we have now added on some  
9 additional witnesses.

10 Now, as Your Honor knows, we have not been  
11 able to take the depositions of any of the youths.

12 The Public Defenders have declined to allow  
13 us to speak with them. I think if you look at the  
14 second thing that we received, Judge, which is  
15 entitled "Evidentiary Points" and I don't know,  
16 does Your Honor have a copy of that?

17 THE COURT: Evidentiary -- I don't, I saw  
18 the document of Evidentiary Points, the first  
19 document I actually had seen.

20 MR. DAKAN: Oh, okay.

21 I only have one copy, but Your Honor is  
22 certainly welcome to look at mine.

23 THE COURT: Well, you read it to me.  
24 I heard you.

25 MR. DAKAN: Okay, all right.

1           The Evidentiary Points seem to me, Your  
2 Honor, to point basically to 1983, Civil Rights  
3 action.

4           But included in that is some statements  
5 that they expect to prove is, for example, that  
6 the president's dominance and control is the  
7 exclusive real interest of the staff.

8           There's an atmosphere of tension and fear.  
9 Written rules applied capriciously. Children are  
10 in fear of their personal safety and so forth.

11           And all of these, I presume, are coming from  
12 the witnesses, the children that are involved in  
13 this case. It has anything to do with their  
14 previously records and so forth.

15           As Your Honor knows this case is extremely  
16 important. The impact of Your Honor's ruling on  
17 the Department potentially is catastrophic.

18           It would not only would affect just the use  
19 of this facility from Dade County, but it  
20 certainly would affect the ---

21           MR. ROSENTHAL: Judge, excuse me, could  
22 I interject one thing?

23           THE COURT: Yes. On that point, I hope you  
24 do.

25           MR. ROSENTHAL: Thank you.

1                   This sounds like an opening statement.

2                   I would have thought that we would have had  
3 the first opening statement.

4                   If Mr. Dakan has either objections or  
5 housekeeping matters to present to the Court, then  
6 I would defer.

7                   But if this is simply an extended prologue  
8 to their entire position or the problems that they  
9 are going to have ---

10                  THE COURT: He asked for some kind of  
11 brevity, but do we have opening statements.

12                  MR. ROSENTHAL: Okay.

13                  MR. DAKAN: Well, no, not really actually,  
14 Judge, and I was just getting to that.

15                  What I would propose and what we would  
16 like, we would like the opportunity to talk with  
17 the youths, we would like the opportunity to talk  
18 with the mothers who we have not been able to talk  
19 to.

20                  My point and I apologize if it sounded  
21 like an opening argument, it is simply that, you  
22 know, all of these are matters which in the  
23 ordinary course of the case we would have been  
24 able to take depositions, all of them, I think,  
25 including Luis.



1                   We certainly would have had the time and  
2                   have been able to argue that before Your Honor.

3                   We haven't been able to do that.

4                   Secondly, Your Honor, with respect to  
5                   Mr. DeMuro, who is a witness that they will be  
6                   calling for observations of the facility.

7                   We were able to talk with him and in fact  
8                   we will have a full copy, I have a condensed copy  
9                   here of the transcript of that.

10                  And that was taken this last Tuesday morning.  
11                  And again I want to thank the Public Defenders for  
12                  cooperating with us with respect to that.

13                  In that, he listed a number of, what he  
14                  deemed to be inappropriate items, which he felt,  
15                  number one, violated what we call the ACA  
16                  Standards, which are the applicable standards,  
17                  possibly even violated Civil Rights.

18                  He gave us a few examples, but specifically  
19                  stated that he would not be able to tell us all of  
20                  those matters until -- well, actually at all.

21                  He did indicate he might be able to get  
22                  a list to us tomorrow morning, before he starts to  
23                  testify.

24                  Now, again, we are not going to be in a  
25                  position to cross-examination youths, because we

1 don't have sufficient information as to what they  
2 are going to testify to, as we would in a regular  
3 case.

4 And we don't have complete information from  
5 this expert, who this Court indicated would be  
6 kind of an independent critique of the facility.

7 And we would not have the opportunity to  
8 do complete examination with respect to him.

9 So what I would suggest, Your Honor, is  
10 this: That we go ahead today with the direct  
11 examination of the youths; that we then put off  
12 the cross-examination of those youths until Monday  
13 or Tuesday of next week, which would then give us  
14 the opportunity to, number one, to prepare for the  
15 cross-examination.

16 And, number two, to determine what witnesses  
17 we would need from the facility to rebut the  
18 allegations that I expect we will hear today.

19 We would then take the testimony, direct  
20 testimony, and to a great extent the cross-  
21 examination of Mr. DeMuro tomorrow and defer only  
22 those parts that he will give us a list on until  
23 next week and complete the cross-examination of  
24 him at that point.

25 I would contemplate then we could finish

1 up the Public Defender's case Monday to give us  
2 the opportunity to prepare the cross-examination,  
3 prepare the witnesses and we then could put our  
4 case on Tuesday.

5 And we ask that, Judge, in the interest of  
6 fairness. We ask that in the interest of assuring  
7 that this Court has all the facts before it makes  
8 this most important decision.

9 Thank you, Your Honor.

10 THE COURT: I'm a little, I'm as surprised  
11 as I guess Mr. Dakan was, that you have added  
12 these new witnesses when representation was made  
13 last week --

14 MR. ROSENTHAL: Excuse me --

15 THE COURT: --there were only  
16 going to be the children and your experts.

17 MR. ROSENTHAL: --excuse me, excuse me,  
18 Judge, you should not assume anything from that  
19 answer, from the statement or monologue that Mr.  
20 Dakan gave to the Court.

21 We have not had a chance to respond to  
22 that, so perhaps you would like to hear our  
23 response before you make conclusions about the  
24 state of discovery.

25 THE COURT: All right.

1           MR. ROSENTHAL: Starting over two weeks  
2 ago, I engaged in extensive conversations. I spent  
3 the equivalent of several days with the  
4 Department, both advising them of the nature of  
5 our case and trying to ascertain the nature of  
6 their case.

7           We have still not been given availability  
8 of a couple of their witnesses. One was the  
9 former facility administrator and we have had only  
10 within the past day we have been able to have the  
11 prospect of making contact with her, because the  
12 Department's response, when we learned last week  
13 that the facility administrator for the middle  
14 part of this year, from April till early October,  
15 is no longer the facility administrator and we  
16 assumed she would be available.

17           And they said, "No, that's a CFC employee,  
18 we have no control over CFC:"

19           We have endeavored under -- and let me just  
20 state fully for the record to be fair on other  
21 points -- the Department or its Counsel have been  
22 endeavoring to cooperate very substantially.

23           There are varying, my point is that there are  
24 varying levels of cooperativeness from the  
25 Department. We have endeavored fully to

1 cooperate.

2 Our position was no secret that we were  
3 objecting to depositions of the children and this  
4 Court was aware of that and indeed because of that  
5 position, this Court did not override that  
6 position.

7 This Court required us to provide to the  
8 Department particulars of proof, which have been  
9 provided and were provided the day before the  
10 Court required it be provided.

11 We have endeavored to keep the Department  
12 as fully apprised of where this hearing was going.  
13 You will have a situation, Judge, where the  
14 Department will protract endlessly.

15 We would completely object to breaking  
16 direct from cross for a number of reasons and we  
17 have not yet completed depositions -- and by the way,  
18 Mr. Dakan did not inform --

19 THE COURT: I'm going to ask you to break  
20 up direct from cross.

21 MR. ROSENTHAL: Thank you.

22 THE COURT: There maybe have some other  
23 measures taken, but certainly that's not one of  
24 them.

25 MR. ROSENTHAL: And I don't want to impose

1 on the Court's time. I will just say this very  
2 briefly:

3 What Mr. Dakan did not inform the Court  
4 was that at least two of the witnesses, that he  
5 just read to the Court from that document, are  
6 Department or CFC people. They are not our folks,  
7 okay?

8 And one of them was deposed yesterday and  
9 I was in my office. It was done by telephone from  
10 my end. I don't know if Mr. Dakan was present.  
11 Either Mr. Dakan or Ms. Marvin was present when we  
12 deposed Ms. Pelcyger, who Mr. Dakan misidentified  
13 in the record. That is one of the people listed  
14 there.

15 Another person that is -- that we would have  
16 hoped to have the opportunity to talk to you, that  
17 the Department has apprised us they intend to  
18 call, is Mr. Irving who is the vice-president of  
19 CSC, related to this oversight function and we  
20 were apprised that the earliest we could speak to  
21 him was tomorrow afternoon.

22 So, we have endeavored to cooperate with  
23 them. To some significant degree, they have  
24 endeavored to cooperate with us. To some  
25 significant degree, the Department has made

1 discovery very difficult.

2 And I would just simply suggest to the  
3 Court let's go forward and take it as it plays  
4 out.

5 And if, in fact, there is prejudice to  
6 the Department, now I'm going to be heard on that  
7 issue of the Department as a party to this  
8 proceedings, this thing from an interested  
9 non-party.

10 Then the Court can address that remedially.  
11 I mean I wouldn't have the Court -- I wouldn't  
12 have any problem with the Court considering if  
13 there is an appropriate remedy that needs to be  
14 done, but it is premature at this point, because  
15 we all are operating under very labored compressed  
16 time circumstances and we have endeavored to the  
17 fullest.

18 And even yesterday in deposition, Judge ---

19 THE COURT: What about the family members?

20 MR. ROSENTHAL: Two moms, I believe.

21 THE COURT: All right.

22 MR. ROSENTHAL: And if the Court wants to  
23 take a break and let them speak with them or  
24 depose them, we would not object to the moms.

25 We would object to the children being

1           deposed for the reasons that were previously  
2           stated to the Court I think at the beginning of  
3           last week.

4           And in which the Court in response to which  
5           said, "Well, since you are not doing that, then  
6           provide points of proof", which we have.

7           There is specific as points of proof as  
8           one can comprehend and we have not gotten any  
9           equivalent points of proof from the Department nor  
10          have we had full disclosure of their witnesses nor  
11          have we had -- each time we get a document, it is  
12          belated and in each document were provided, we  
13          learn there's an indication of another document.

14          We are on an endless paper chase trying to  
15          accumulate all the Department's information and  
16          I'm not sure that the Department has kept his  
17          Counsel apprised of the degree of reportage out  
18          there.

19          So, we are both operating under very  
20          difficult circumstances. I'm not complaining  
21          to the Court that it is unfair, we will go with  
22          what we have to go with.

23          I would have preferred to have a much  
24          fuller ability to understand what the Department  
25          has done in this case, but part of it is a



1 pulling-teeth process.

2 That is all I can tell the Court.

3 MR. DAKAN: Judge, I won't respond to the  
4 personal accusations, but let me just clarify a  
5 couple of things.

6 One with respect to Jim Irving, who is  
7 the vice-president of CSC, who, like their expert,  
8 Mr. DeMuro, he's got a lot to do.

9 And since this all got sat down and since  
10 they first told us that they wanted Mr. Irving,  
11 basically he has been in and out. He was in  
12 Puerto Rico for a few days. He was in Chicago.  
13 Excuse me, that's their witness, he's in Chicago.

14 Then he was in Washington, D.C. Yesterday,  
15 he flew home. The earliest he is available and he  
16 will be available at any time today actually, if  
17 we have time available.

18 With respect to the other person, I think  
19 what the Court has to understand is that we have a  
20 rather peculiar relationship with providers.

21 And that is that sometime we are their  
22 friends and sometimes we are not. And there are  
23 portions of this case even where sometimes they  
24 are our friends and sometimes they are not.

25 They have an exposure here more so than the

1 Department, I would submit to the 1983 action. It  
2 would be grossly unethical for me to force them to  
3 provide witnesses and that is not a decision that  
4 I can make.

5 They have been kind enough, Your Honor, to  
6 provide ---

7 THE COURT: Let's not talk about your  
8 witnesses --

9 MR. DAKAN: Okay.

10 THE COURT: --because Mr. Rosenthal has said  
11 that he accepts that.

12 MR. DAKAN: Okay. All right.

13 THE COURT: And the two mothers, I mean we  
14 can defer, so that you can depose the two mothers,  
15 if they are your employees -- are any of those two  
16 people your employees, like he said or not?

17 MR. DAKAN: No, they are not our employees.

18 MS. MARVIN: Well, which two people?

19 MR. DAKAN: Which two are we talking about?

20 MR. ROSENTHAL: Well, I heard, it was  
21 mispronounced, but I heard the name Pelcyger,  
22 P-e-l-c-y-e -- she was deposed by us yesterday in  
23 the presence of one of them.

24 THE COURT: Do you have a problem with  
25 that witness?

1 MR. DAKAN: Not really.

2 MR. ROSENTHAL: So that's off the list.

3 It's off the list that was read to the  
4 Court just now.

5 The other witness, Ingrid Cheves, is  
6 the former facility administrator, who the  
7 Department's position has been, "You'll have to  
8 find her on your own."

9 So, Mr. Dakan is hardly positioned to  
10 complain to this Court that he is not prepared  
11 with regard to Ms. Cheves, because if she's in  
12 anybody control, she's in the Department's  
13 control, but they said, "No, she is not in our  
14 control, she's under the control of the vendor, we  
15 have no control over the vendor."

16 THE COURT: Have you been able to find her?

17 MR. ROSENTHAL: We have located her and I  
18 tried to make telephone contact, a subpoena was  
19 served on her I believe Wednesday, earlier  
20 yesterday, and I tried to make a telephone contact  
21 in the afternoon in the course of trying to break  
22 out of the deposition we were taking of their  
23 witnesses and have not been able to make  
24 telephonic contact yet.

25 THE COURT: I know they can't provide her at

1 the moment. They might not even have her.

2 MR. DAKAN: Uh-huh.

3 THE COURT: But if they have her and she  
4 comes here and if the conversation with her is not  
5 adequate, we'll take some kind of measures.

6 Now in terms, as I said, in terms of the  
7 children, the children are going to be cross-  
8 examined after they testify.

9 MR. ROSENTHAL: Thank you.

10 MR. DAKAN: Judge, we would then ask at  
11 least some short time to informally speak with  
12 these children or take their depositions.

13 Again, and before Mr. Rosenthal interrupts,  
14 I'd like to complete my argument.

15 Let me give you an idea of what we are  
16 dealing with.

17 Here is the second point they expect to  
18 prove: Pahokee is a prison by merely an  
19 atmosphere.

20 The children fear for their personal safety.  
21 Staff looks on while children jump other children.  
22 Pods take on other pods.

23 The staff uses sexual teasing, this is just  
24 part to seduce or degrade the child.

25 Now it's nice to know that that's ---

1 MR. ROSENTHAL: Excuse me, Judge. I'm going  
2 to have to interrupt, I'm going to have to  
3 interrupt for this reason: --

4 THE COURT: One second, one second.

5 MR. ROSENTHAL: --these were points of proof  
6 provided to the Department, because the Court  
7 required and we observed that and we replied  
8 early.

9 Now what Mr. Dakan is doing is with the  
10 information we have supplied him under the Court's  
11 gesture of graciousness to the Department about  
12 his complaint about the disadvantage of deposing  
13 the children is now to obtain the points of proof  
14 and then to reiterate a desire to depose the  
15 children.

16 The simple proposition is he wants to depose  
17 the children and we would object and move ---

18 THE COURT: Just remind me why I may have  
19 felt that the children should not be deposed?

20 MR. ROSENTHAL: I was not at that hearing,  
21 but I can tell you what our position would -- I  
22 mean what my Co-Counsel were -- but our position  
23 would be on a number of levels.

24 First, this is in the way of sentencing or  
25 sentencing continuation hearing and there would be

1 privilege attached to that.

2 That is if the defendant in a criminal case  
3 were to come in and testify in a motion to  
4 mitigate, there is no deposition right to the  
5 State.

6 The Department is one removed from the State  
7 in the sense in which they are portraying  
8 themselves to the Court, because under Chapter 39  
9 and I apologize, but as a side-bar housekeeping  
10 matter, I would unless there's an objection,  
11 continue to refer to the provisions in Chapter 39  
12 with knowledge that they have been renumbered as  
13 Chapter 985, but the substantive provisions as far  
14 as I can understand ---

15 THE COURT: Well, you keep calling this a  
16 Level 6 and that language is out of the statute  
17 for years.

18 MR. ROSENTHAL: That's absolutely correct,  
19 Judge and we all understand that.

20 So I just want to put on the record that  
21 we are -- we are I suppose archaically referring  
22 to the portion of the statute that's now been  
23 bypassed a transfer to a renumbering, but the  
24 substantive provisions unless or until we identify  
25 differently to the Court, we will bear out on

1 this.

2 That there be no, under Chapter 39 or 985  
3 now, the Department is not a party. The  
4 Department is not a party. It is an interested  
5 non-party.

6 I will abide by the Court's ruling out of  
7 respect to the Court. We will not reargue that  
8 proposition of length.

9 I would assert to the Court that the  
10 jurisdictional framework for this hearing has been  
11 established by the denial of probation and by this  
12 Court's Order of October 17th or October 20th.

13 THE COURT: Let's not argue it. Just tell me  
14 why, other than the, because in terms of your  
15 first reason for not deposing the children, the  
16 children are not giving testimony about their  
17 characters, about whether they ought to go to  
18 moderate risk or high risk or about their  
19 offenses.

20 The children are going to be testifying  
21 about what's happened to them since they have been  
22 placed if not at risk.

23 MR. ROSENTHAL: Well, the second part of  
24 the hearing, Judge, you know, the primary part of  
25 the hearing in which the Department has an

1 interest is, "Is this a moderate risk facility?"

2 If it is not a moderate risk facility, then  
3 the question will become what to do with the  
4 children.

5 What you also have, Judge, is basically a  
6 basic proclamation of inability to deal with the  
7 litigation on the part of the Department.

8 The Department controls the vendor. In any  
9 relevant statutory or constitutional sense, the  
10 fact that the State contracts out a facility to a  
11 private vendor affects none of the legal  
12 responsibilities of the State to the Court.

13 THE COURT: You don't even have to discuss  
14 that because you have already conceded to that.

15 MR. ROSENTHAL: I'm sorry. But the complaint  
16 then, Judge, the complaint by the Department is  
17 that they haven't been able to understand what the  
18 kids ---

19 THE COURT: We're not talking about quid pro  
20 quo here --

21 MR. ROSENTHAL: Okay, okay.

22 THE COURT: --we're talking, I mean each  
23 situation is on its own, so being on its own, I'm  
24 not quite certain why the Department should not be  
25 able to talk to the children specifically about,



1           you know, what happened to them.

2           MR. ROSENTHAL: Judge, we haven't had that  
3           opportunity. We've been, the Department has made  
4           it as difficult as possible.

5           It refused for the longest time to transport.  
6           Finally, this Court agreed that they should be  
7           transported down, a number of the children who we  
8           would have liked to speak to had been released.

9           The logistic difficulties have been immense  
10          in terms of our ability to communicate with our  
11          own clients.

12          A lot of the children are not verbal in the  
13          sense that we could write -- we could write or get  
14          meaningful written responses in that regard.

15          And so, Mr. Faber and Ms. Osborne have made  
16          multiple trips to Pahokee and even then it's  
17          extremely difficult in terms of the atmosphere up  
18          there to speak with them individually.

19          I think the Department was, you know,  
20          semi-cooperative, I should say the vendor or the  
21          Department, I'm not sure which, was semi-  
22          cooperative.

23          I mean we had access to the children, but  
24          the circumstances under which we were able to talk  
25          to them was extremely difficult itself.

1           They have had the children in their control  
2           since commitment. Since commitment. And there is  
3           nothing -- there is no, I have to step back and  
4           respond to the party thing -- the Department is  
5           not a party under Chapter 39 or 985.

6           This Court has in its discretion made them  
7           so. I will respect the Court's ruling. I don't  
8           believe it is a proper discretionary matter.

9           I believe that properly the Court could  
10          recognize them as an interested non-party, but so  
11          the first instance is they are then presuming upon  
12          what the Court views as a discretionary extension  
13          of party status to them, which we think is a  
14          non -- should not -- could not discretionally  
15          been extended, but we will respect the Court, we  
16          will abide by the ruling.

17          They are presuming upon that, so then say,  
18          "Now, Judge, give us complete discovery rights."

19          What is the organic source of the discovery  
20          rights they are requesting?

21          Before the Court turns to us and say, "Why  
22          don't we not want them to be deposed ---"

23          THE COURT: We've heard enough.

24          MR. ROSENTHAL: Okay.

25          THE COURT: I think I've heard enough. We

1 can begin the hearing and we're going, as I said,  
2 we are just going to go ahead and make your  
3 opening statement.

4 MR. ROSENTHAL: Thank you.

5 MR. BOTKIN: Judge, if I might --

6 THE COURT: And if you would like to --  
7 do you want to say something before beginning?

8 MR. BOTKIN: --I think, I think I need  
9 to raise a preliminary matter, because I am a  
10 party.

11 THE COURT: You are, that's right.

12 MR. BOTKIN: --and I didn't at the time join  
13 in Mr. Dakan's motion to dismiss, but I will  
14 formally on the record now join in that motion to  
15 dismiss.

16 And in addition, I want the Court to again  
17 re-listen to what the Public Defender has argued  
18 here.

19 The Public Defender absolutely does not want  
20 the Department to be a party in this case. They  
21 are abiding by your ruling out of respect.

22 But why don't they want it to be a party?  
23 They want them to argue and defend their position,  
24 something they are totally in control of; they  
25 don't want them to depose clients; they don't want

1           them to have a say; they don't want them to have  
2           the rights of any type of an action that would be  
3           filed as appropriate to determine this issue.

4           The State moves again to strike this hearing,  
5           to strike their motion to modify, this is just an  
6           improper proceeding.

7           The State will not try to defend or prosecute  
8           as to whether this is a moderate risk level, a  
9           high risk level, a maximum risk level; or  
10          apparently now which is separate from the motion,  
11          they are going to raise that, in fact, it's a  
12          prison.

13          That's up to the Department to state real  
14          strongly and they should be the ones to argue this  
15          position.

16          THE COURT: I've allowed that, because I felt  
17          that that is the way for me to be able to get the  
18          facts here.

19          If I'm wrong, if that other case and so  
20          forth, you know, is correct, I'm not sure what the  
21          Appellate Court will do; but, you know, we're  
22          going ahead.

23          MR. ROSENTHAL: I would correct Mr. Botkin's  
24          statement that we did not want the Department to  
25          be heard.

1                   When we said to the Court at the outset on  
2                   October 1, that the Department could be heard and  
3                   the Court should let them be heard as an  
4                   interested non-party -- as an interested non-  
5                   party.

6                   I never tried to permit ---

7                   THE COURT: We're ready for opening  
8                   statements.

9                   MR. ROSENTHAL: Thank you. Okay.

10                  MR. BOTKIN: Your Honor, the State of  
11                  Florida, we have the Attorney General.

12                  THE COURT: Oh, yes, another party.

13                  MR. NEIMAND: Judge Hopkins put on the  
14                  record, we also join in the motion to dismiss.

15                  MR. ROSENTHAL: Judge, perhaps it might  
16                  be more economical if the State Attorney's Office  
17                  and the Attorney General just had a continuing and  
18                  joining in with the Department's position and that  
19                  would, you know, obviate the need to state of  
20                  record each time; but that's up to them.

21                  MR. BOTKIN: State as it indicated is not  
22                  joining as a party in the Department's position.

23                  We are not a defendant Department or a  
24                  position about that. We feel the Department is  
25                  the proper party to respond to the allegations,

1 but we feel that this motion is an improper  
2 vehicle for him to have to make that respond.

3 THE COURT: Nevertheless, the Attorney  
4 General may have a different position than the  
5 State Attorney in terms of protecting the interest  
6 of the State.

7 MR. NEIMAND: So, we'll object individually.

8 MR. DAKAN: Judge, one last, very personal  
9 thing, I'll only take two minutes. I do suffer  
10 from a blood-sugar tolerance problem.

11 I do have some bananas with me and I  
12 wondered if the Court would have any objection  
13 if I start feeling like my blood-sugar level is  
14 going down, I can ---

15 THE COURT: Eating is permitted in here.

16 The only thing, there's a sign on the door  
17 that talks about chewing gum, but there's nothing  
18 about eating.

19 MR. DAKAN: Okay. Thank you, Your Honor.

20 I will try to keep my banana quiet.

21 (Laughter by all.)

22 MR. ROSENTHAL: Judge, I would preface my  
23 remarks by saying that the Department will and  
24 despite our sparing, Counsel are very typically  
25 civil and likeable individuals, I'm referring to

1           opposing Counsel, they will try to put as human a  
2           face on this decision as they possibly can.

3           And they would do that through their own  
4           presentations and they will do through the  
5           presentations of such witnesses that they may  
6           choose to present, but the ultimate central truth  
7           in the case is that Pahokee is a prison.

8           Our premise -- our premise is that a prison  
9           or a large institutional prison-like facility  
10          cannot be a Level 6 or a moderate risk facility  
11          statutorily.

12          Our next premise is that Pahokee is a  
13          prison or a large institutional prison-like  
14          facility.

15          And the compelled conclusion then is that  
16          Pahokee cannot be a Level 6 or a moderate risk  
17          facility.

18          The Department will tell the Court that  
19          it cannot construe the statute or alternatively it  
20          must defer to the Department's expertise.

21          The expertise that went into this decision  
22          hopefully will be developed to some degree at this  
23          hearing. And I believe that the Court should and  
24          will come to the conclusion this is perfectly  
25          appropriate for the Court to construe the statute

1 and see if this is a statutorily permitted  
2 facility for Level 6.

3 If it is not, if it is not, the statutory  
4 distinctions between 4 and 6 and 8 and 10, and in  
5 particular between 6 and 8, mean nothing and  
6 basically it's a nullification of the statute.

7 So, I would ask the Court to hear the  
8 evidence, to listen to the difficult or disputed  
9 or arguably chameleon-like parts of the position  
10 that the Court may hear in opposition to our own  
11 and I'm not referring to Counsel, I'm referring to  
12 the Department's defense here.

13 This facility within the metaphor of the  
14 response we filed in opposition to the writ of  
15 prohibition the Department filed, is an elephant.  
16 And they may put it on a diet and they may put  
17 some ribbons on it and indeed as I speak to the  
18 Court, I believe from the depositions we were  
19 completing yesterday, additional ribbons are about  
20 to be put into place, probably to try to thwart  
21 where this proceeding is going.

22 But I am telling the Court this is not an  
23 appropriate moderate risk facility and I believe  
24 we will satisfy the Court as to that and that the  
25 Court will and should and will do the correct



1                   thing with regard to that reality.

2                   Thank you.

3                   THE COURT: Mr. Dakan.

4                   MR. DAKAN: May it please the Court, my  
5                   name is Alan Dakan, I'm here on behalf of the  
6                   Department of Juvenile Justice.

7                   It seems to me, Your Honor, that we are here  
8                   to do one thing and one thing only, as I  
9                   understand the law.

10                  And that is, is to determine whether or not  
11                  at the conclusion of this hearing, the Public  
12                  Defender's Office has established that the  
13                  Department's construction of 39.01(59)(c), which  
14                  is the moderate risk classification is entirely  
15                  erroneous.

16                  And we would submit to Your Honor that that  
17                  is the appropriate standard. We would submit that  
18                  what the Court has to look at is not just whether  
19                  ours is the sole interpretation or even the  
20                  correct interpretation, but it is one which is in  
21                  the range of permissible interpretation.

22                  And if so, the Court would have to deny the  
23                  Public Defender's position.

24                  Now, Your Honor, I don't want to go into a  
25                  lot of dialogue because I recognize this is an

1 opening statement, but I think we do need briefly  
2 to build this into the framework of what  
3 31.09(59)(c) actually has by way of criteria and  
4 as it applied to Pahokee, what we are dealing with  
5 are, I believe, Your Honor, the very first thing  
6 is whether or not these youths are a moderate risk  
7 to public safety.

8 Now, the Court has already determined that.  
9 In determining that these youths should be placed  
10 in a Level 6 facility. The primary thing the  
11 Court determined was that, in fact, these youths  
12 representing moderate risk to public safety.

13 The next thing is, is that these youths  
14 require close supervision on a 24-hour basis.

15 And, again, by virtue of determining that  
16 this was a moderate risk child, the Court has  
17 determined that to be the case.

18 A malice is to be fenced in, Your Honor, and  
19 that is specifically required, not required, but  
20 it is to be an option by the legislature.

21 They may be locked up in the sense that they  
22 may be in a hardware-secured cell and they be  
23 secluded, Your Honor, when they are a physical  
24 threat to themselves or to others.

25 Now, I think that the evidence will show

1           that when this exclusion has been used, that's  
2           precisely the case.

3           And they may be mechanically restrained,  
4           when necessary. Those are all the statute's  
5           provisions.

6           I think I would preface what the evidence  
7           will show, Your Honor, by pointing out that needs  
8           don't come into the question of what risk level a  
9           youth is in.

10          And by that, I mean this, Judge, obviously  
11          needs are an important part; but those needs for  
12          the most part are spread throughout whether we are  
13          talking about a Level 2 child or whether we are  
14          talking a Level 10 child, a minimum risk, non-  
15          residential through maximum risk residential, the  
16          youths generally have the same needs.

17          They may have drug problems, they may have  
18          self-esteem problems, they may have psychological  
19          problems and so forth.

20          And all of those have to be addressed at any  
21          level, so I don't think that's really an issue  
22          that is going to concern the Court in looking at  
23          this.

24          Well, Judge, I think what the history of  
25          this is going to show is how we got here and I

1 would beg the Court's indulgence because we do  
2 have a complicated situation and I believe the  
3 evidence is going to show this as follows:

4 Back in the 1960's and the 1970's, Florida  
5 had an incredibly chaotic and archaic system of  
6 juvenile justice.

7 As Your Honor well knows we had large  
8 warehouses horribly underfunded and we finally  
9 ended up in some horrendous litigation, which  
10 really just recently got out.

11 A classic example was, of course, the  
12 training school. Those were up in the Panhandle.  
13 It's 900 beds, there's no quality assurance, there  
14 was no oversight, there were very clear  
15 violations.

16 Unfortunately, Your Honor, the legislature  
17 adamant as it was with HRS still provided not a  
18 great deal of funding to get other types of  
19 facilities. What they did provide was funding for  
20 small facilities.

21 And I think the evidence will show, Your  
22 Honor, that first of all, there is no empirical  
23 evidence at all that a large facility is there or  
24 worse than a small facility.

25 The reason that Florida went to small

1 facilities was economically driven. For example,  
2 the evidence is going to show that in 1990, the  
3 legislature funded a total of 125 juvenile beds  
4 statewide. That's not that 95 percent of the  
5 facilities necessarily had to be smaller, there  
6 was really no other way to do it.

7 Well, the experience, Your Honor, was that  
8 the small facilities as funded didn't work and we  
9 know that. Part of the problem was is when the  
10 facility was closed, when the HRS, I believe,  
11 agreed to and certainly the Federal Court mandated  
12 that the reduce their populations, a lot of those  
13 kids went to the available halfway houses and  
14 available community centers.

15 The result of that, Your Honor, was we had  
16 a lot of mistakes, we had a lot of disruption of  
17 facilities, we had a lot of crime that the public  
18 received at least as coming from youths who were  
19 in these various facilities. There weren't enough  
20 facilities.

21 You know, there was not an ability to do what  
22 we do now, just to segregate youths by risk and to  
23 all risk and on up through high risk.

24 And the perception, Your Honor, from the  
25 public through the legislature, through the

1           judiciary was that the small facility systems had  
2           failed.

3           The consequence of this, Your Honor, was that  
4           the legislature decided to cut away the Juvenile  
5           Justice delinquency from HRS, which is a social  
6           organization. The purposes of HRS prior to this  
7           and actually still are the Children Family  
8           Services were as a social institution.

9           And again to backtrack a little bit, Your  
10          Honor, the way that HRS had approached it was with  
11          the model of the small halfway house, the model of  
12          a community-based treatment facility.

13          And the old approach was as a youth, you  
14          didn't look at the youth in terms of the youths'  
15          crimes that they'd commit. You looked at the  
16          youth in terms of what the youth needs.

17          And the legislature, in reacting to what the  
18          public indicated, decided to split that off and  
19          they created the Department of Juvenile Justice.

20          And in creating the Department of Juvenile  
21          Justice, Your Honor, it made the Juvenile Justice  
22          a law-enforcement agency -- excuse me, a criminal  
23          justice agency, I'm sorry. Law enforcement is  
24          different and I apologize -- a criminal justice  
25          agency.

1           And as what the evidence will show, Your  
2 Honor, is that in doing that, the legislature  
3 rejected the old model as the exclusive model that  
4 the legislature looked at.

5           Now, I think that the evidence is going to  
6 show, Your Honor, what the legislature had in that  
7 regard was. I would refer Your Honor and I have  
8 to say 985.01 from this copy that I have got, but  
9 it's the same in 39 in the "Purposes and Intent"  
10 section and there are a lot of purposes in there,  
11 Judge, and I'm not going to read them all.

12           We will contend and the evidence will show  
13 that all the purposes, the needs of the youth,  
14 rehabilitative needs and so forth are met at  
15 Pahokee.

16           But the one that I want to focus on to show  
17 how the intent of the legislature changed is  
18 985.01, Sub 1, Sub C, which says:

19           "To insure the protection of society by  
20 providing comprehensive standards of the  
21 child's needs, so that the most appropriate  
22 controlled discipline" -- we go back over  
23 this -- "controlled discipline, punishment,  
24 and treatment can be administered consistent  
25 with the seriousness of the act committed,

1 communities long-term need for public safety,  
2 the prior record of the child and specific  
3 rehabilitation need to the child."

4 So, unlike prior to 1994, where we focused  
5 on only essentially the needs of the child. What  
6 the legislature said here is, "We're not only  
7 going to talk about the needs, but we are going to  
8 talk about discipline and we are going to talk  
9 about punishment. There were two many things that  
10 came that the legislature wanted us to look at.

11 I also refer Your Honor to 985.02, in  
12 Subsection 3, 985.02 specifically is entitled  
13 "Legislative Intent in the Juvenile Justice  
14 System."

15 Again, Your Honor, there are a number of  
16 intents in there and the evidence will show that  
17 all of those intents are being met at Pahokee  
18 just as in every other facility.

19 What Subsection 3 says is:

20 "Juvenile Justice and Delinquency Prevention:  
21 It is the policy of the State with respect  
22 of juvenile justice and delinquency  
23 prevention to first protect the public from  
24 acts of delinquency.

25 "In addition, it is the policy of the State



1 to" ---

2 And then it goes on and talks in terms of  
3 developing effective methods of preventing acts  
4 which the Department does and that's not relevant  
5 in this case, of diverting children, which the  
6 Department, and that's not relevant. A body of  
7 well-trained personnel, high-quality services, and  
8 cost-effective programs in the Juvenile Justice  
9 System.

10 I think that the evidence will show that  
11 is precisely what Pahokee is.

12 Well, we are only at this -- Judge, this was  
13 the 1994 overhaul that created it. Last year, I  
14 believe, the legislature and the people of Florida  
15 was still not totally satisfied with where things  
16 were going. It may have been actually the year  
17 before, we will have the evidence of the specific  
18 time, but the very first thing that happened was  
19 that when it came to Level 6, moderate risk, the  
20 legislature added the provisions that if we  
21 appropriate, you can have a fence around the  
22 facility to keep the kids in.

23 And if we appropriate, you can have hardware  
24 secured facility, i.e., it can be locked.

25 Now, I think that the evidence will show,

1 Your Honor, that again this was in reaction to  
2 everyone's concerns and the public perception that  
3 there were too many escapes from moderate risk  
4 facilities, too many crimes occurring in moderate  
5 risk facilities, there were too many re-offending,  
6 Your Honor.

7 So, that what was happening is if you had  
8 someone who really was appropriate for a moderate  
9 risk, who would escape, who would re-offend, who  
10 would then be direct filed or then be sent to  
11 Level 8, which wasn't really appropriate. It was  
12 not a place for that situation to happen.

13 So, I think that's the reason why they did  
14 that; but this last year, Your Honor, in addition  
15 to that and in the end a reflection of the  
16 public's perception, the legislature determined  
17 that boot camps, which are fenced and which are  
18 highly regulated with their uniforms and so forth,  
19 to be a Level 6 program, which used to be 4, 6,  
20 and 8, I think. I believe there are some 4's.

21 Basically, they said, "We want boot camps to  
22 be a Level 6."

23 I think that the evidence is going to show,  
24 Your Honor, that the legislature and it is as Your  
25 Honor well knows the legislature that decides how

1 we will make this provisions a need, whether it is  
2 a juvenile or an adult, that the legislature  
3 intended that there be places in the continuum for  
4 use that although they would not be satisfactory,  
5 a small halfway house or a community facility,  
6 but, nevertheless, also not be satisfactory in a  
7 Level 8 or hard. That's what occurred.

8 So, what we basically had at that point, Your  
9 Honor, was that we had set up levels, which first  
10 and foremost were for public protection.

11 We also, I think, set the levels in such a  
12 way that they really are not separate and  
13 distinct.

14 What they are, Your Honor, is a milestone, so  
15 to speak, on the continuum of services to be  
16 provided consistent with public safety. And you  
17 start with Level 2, which is non-residential.  
18 Youths are required to be there.

19 Then we go to Level 4, which actually if you  
20 look at the dictionary, it is a prison, too,  
21 because the youths are not supposed to escape from  
22 that. And on up through the scale.

23 Let us turn now, Your Honor, to Pahokee  
24 itself. Again, Your Honor, one of the things  
25 that you need to look at in determining what

1           happened here is the recognition that not only was  
2           this driven by the public perception of crimes,  
3           and juvenile crime in particular, but also by the  
4           economics.

5           We start in the early times, the economics  
6           were such that really all that could be found,  
7           cited, opened were the small facilities.

8           What is happening now, Your Honor, is that  
9           it was not only that perception, but there is also,  
10          a determination that the small facilities are not  
11          necessarily, particularly working out. They are  
12          not cost-effective, they cannot provide the types  
13          of services that a larger facility can provide.

14          And, in fact, Your Honor, what has occurred  
15          and part of the reason why this is important, is,  
16          for example, other private providers who have good  
17          facilities, you know, are making plans to expand  
18          100 beds, 200 beds, 300 beds.

19          The legislature has appropriated, and we are,  
20          in fact, building, I don't know if they are opened  
21          yet, two 100-bed facilities.

22          MR. ROSENTHAL: Judge, I'm going to briefly  
23          interrupt and just ask the Court to put some  
24          boundary on open argument, just to the opening  
25          statement, to distinguish it from what I presume

1 would be Counsel's entitlement to closing ;  
2 at the conclusion of the hearing.

3 THE COURT: Well, I can't say that, because  
4 I think you are on Point 2 and you probably don't  
5 have more than a couple of points.

6 MR. DAKAN: I don't, Your Honor.

7 THE COURT: So, if, if, you know, if you  
8 finish within the next ten or fifteen minutes, I  
9 have no problem.

10 MR. DAKAN: That will be fine, Judge.

11 So, we are going to the larger facility. In  
12 fact, their experts will tell you that a hundred  
13 to a hundred and twenty-five beds is really not an  
14 appropriate facility for moderate risk needs.

15 Right off the bat, we did not ask for either  
16 the Polk facility or the Pahokee facility. There  
17 was not a budgetary appropriation that the  
18 Department made in 1995. .

19 We were quite happily proceeding along with  
20 our programs. What happened, Your Honor, was  
21 the Honorable Governor Chiles saw that the  
22 Department of Corrections had a youth, two useful  
23 offender program facilities, Polk and Pahokee,  
24 which they didn't need. In fact, DOC had  
25 overbuilt for their youthful offenders, so the

1 Governor and the Governor's appropriation  
2 recommended to the legislature that the  
3 legislature should turn these facilities over to  
4 the Department.

5 And the specific transfer by the legislature  
6 was, and I quote, "to be used for placement of  
7 committed use."

8 I think the legislature -- the evidence will  
9 show, Your Honor, that the legislature knew at the  
10 time that we were fenced, that the type of fencing  
11 that they have, I think they knew at the time that  
12 they were going to be locked facilities.

13 And I think that that demonstrates very  
14 strongly that the legislature felt that these were  
15 appropriate for committed youths in the Department  
16 of Juvenile Justice.

17 And frankly, Judge, I think if you look at  
18 the statute, the whole purpose of a youthful  
19 offender was kind of to add a, you know, one last-  
20 chance type of rehabilitative type program before  
21 he got to the DOC prison.

22 I think sometime ago, when that was  
23 established, I think the whole purpose was to  
24 make obviously a little higher security than what  
25 we have here, but to still provide certain

1 programs and so forth.

2 Let's neatly dove-tailed with whatever --  
3 with the legislative functions. We have already  
4 discussed there is a need for public safety and  
5 both of these programs provide that.

6 We have already discussed that there's  
7 a trend towards larger facilities. And the reason  
8 for that, Judge, is quite frankly, the legislature  
9 appropriately and the people of Florida want --  
10 and pardon my slang expression -- but they like to  
11 make a stand for the buck. They want the most  
12 amount of dollar value. And as a matter of fact,  
13 their experts say pretty much the same thing.

14 That what you want, Judge, is a good, solid  
15 outcomes and some way to measure those outcomes.  
16 We have in Florida now a performance based budget,  
17 which requires all departments, including the  
18 Department of Juvenile Justice, to come up with  
19 specific criteria on outcomes, not just, you know,  
20 the little things, whether there is the right  
21 number of forks and so forth, but what are citizen  
22 rights, are these kids doing better in school, are  
23 they behaving better and so forth.

24 We have to provide those outcomes and, in  
25 turn, of course, our facility providers have to do

1 the same thing.

2 There's a number of reasons for this  
3 facility, Judge, and I'll get into where we are  
4 momentarily, but one thing I think I want to point  
5 is that there's a simple matter of cost as well.

6 A small facility will cost approximately,  
7 anything up to 25 to 30 beds, it's going to cost  
8 you about \$60,000 per bed to build.

9 A large facility, 100 or more, is going  
10 to cost you between \$45,000 and \$48,000 per bed to  
11 build.

12 So there is a cost situation there. So  
13 they indicated this is totally consistent with the  
14 provision of the 100-bed facilities, some of the  
15 applications that we have seen for large  
16 facilities by premier providers.

17 But what did the Department decide to do?  
18 Well, the first thing it had to do was to figure  
19 out who it was going to go to and CSC already had  
20 the contract. CSC, by the way, Your Honor,  
21 operates other facilities for the Department and  
22 at that time, was operating other facilities for  
23 the Department.

24 My recollection is and I'm not -- oh, yes,  
25 there is the Level 6 and they had a Level 8



1 program.

2 Secondly, Judge, since they had that  
3 contract, it would have been against the  
4 legislative wishes for the Department to open this  
5 up for bidding.

6 So for those reasons, it -- it went to  
7 CSC. Polk was designated as a high risk and the  
8 real distinction, Judge, is not in the building,  
9 it is not in the treatment because the treatment  
10 is going to be pretty much the same across the  
11 board, but it is in the type of offender who was  
12 in the program.

13 The Polk facility has high risk, which means  
14 violent offenders; it means youths who are  
15 involved in crimes against persons primarily, who  
16 had long histories, the kind of kids that we need  
17 to have secured in a high risk standpoint.

18 Pahokee on the other hand, Your Honor, has  
19 youths, some of whom are violent in that respect,  
20 but primarily those who are involved in such  
21 things as auto thefts, home burglaries, some drug  
22 possessions, and so forth.

23 And I think that the Court will find if  
24 the Court look at those records and hears the  
25 testimony that these youth are, in fact, moderate

1 risk youths.

2 But also though know that these youths are  
3 frequently prone to escape, they are youths who we  
4 believed at the time or now, why don't we put it  
5 that way, had high risks for violence to other  
6 youths, violence to staff, prone to escape, and  
7 these are the youths now that are select -- well,  
8 some of the things that the Public Defenders will  
9 point out was that when we opened Pahokee up, we  
10 took 300 people and we took them off the street.

11 And we have not used the criteria that  
12 are in place now. It was not an arbitrary or  
13 capricious reason do that, Judge.

14 At the time that Pahokee opened up, the  
15 Level 8 backup was approximately 300 individuals.

16 The Level 6 was 650 to 750 on the waiting  
17 list. We simply didn't have the facilities that  
18 we either would be willing to take them or that  
19 had the beds available for them, so we had these  
20 kids out on the street.

21 A couple of things happened. Traditionally,  
22 and I think the testimony will show that when you  
23 had youth on the waiting list, two-thirds of them  
24 were going to re-offend.

25 What's going to happen to those two-thirds?

1           Those two-thirds will come back before Your Honor  
2           and Your Honor is going to put them in Level 8, if  
3           Your Honor still has them.

4           They may very well be direct filed and  
5           treated as adults. So, one of the things that we  
6           wanted to do was public safety, get them off the  
7           street so they wouldn't re-offend, and also  
8           protect them, Your Honor, so they wouldn't end up  
9           in an inappropriate level.

10           They would be in a Level ---

11           THE COURT: Let me interrupt you. A waiting  
12           list is not going to a point of this trial.

13           MR. DAKAN: Okay, Your Honor.

14           I just wanted to explain why it was that  
15           we put those kids in.

16           What we have got now, Judge, is we have  
17           established a specific criteria. And the evidence  
18           will show this: .

19           That, number one, they have to have a  
20           second-degree felony or higher; two, they have  
21           to have escaped; three, they have to have been  
22           recommitted on any one of these, on a first-  
23           degree misdemeanor or any felony and have a prior  
24           escape within twelve months; or they have to have  
25           been recommitted on a first-degree misdemeanor

1 or any felony and had at least a prior  
2 residential place. In other words, it didn't work  
3 out in Level 4.

4 They have to have been transported because  
5 they escaped from another facility. They have to  
6 be transferred or recommitted from another  
7 residential place, for example, if they were  
8 disruptive.

9 Physically, Judge, you keep hearing about  
10 a 300-bed facility, but I think that the evidence  
11 is going to show you that it is not ---

12 THE COURT: Are these four children, do they  
13 fit that criteria?

14 MR. DAKAN: I do not believe that all of them  
15 do, Judge.

16 THE COURT: So, what's the relevance of that?

17 MR. DAKAN: The relevance of that, Judge, is  
18 and I think Your Honor made this point at the last  
19 hearing, what happened at the very beginning, and  
20 I think I pointed out the reasons why ---

21 THE COURT: The only relevance that I can  
22 think of is that it bolsters the point of the --  
23 of the respondents, that they ought to be  
24 transferred.

25 MR. DAKAN: Well, it was an administrative

1 decision, Judge, and an administrative decision  
2 for those that didn't meet this criteria, was to  
3 use that facility to again prevent, you know, for  
4 public safety and also to prevent re-offending and  
5 essentially for their own safety.

6 . You know, kids tend when they are out on the  
7 streets and we can't keep them in secured  
8 detention, as you know, they continue their  
9 behavior pattern. If they are in a gang, they go  
10 back to the gang; if they had not been or have  
11 been violent to their parents, they continue to do  
12 that, so it was important to start out with  
13 protection of the public, which is what the  
14 legislature says is first and foremost.

15 And also for their own protection in order  
16 to get these things rolling and I think that is  
17 what the evidence is going to show.

18 But, Your Honor, and I think Your Honor made  
19 this point the last time which was that we have to  
20 look at what it is now.

21 THE COURT: I'm not making any points, I'm  
22 going to be hearing points from witnesses and  
23 therefore I don't want to hear about points that I  
24 made.

25 MR. DAKAN: Okay.

1 THE COURT: I want to hear about points that  
2 I'm going to hear from witnesses.

3 MR. DAKAN: Okay.

4 THE COURT: This is opening statement.

5 MR. DAKAN: Yes, Your Honor.

6 All right, Judge. Physically, this is not  
7 like Dozier was. This is not 300 beds in big long  
8 halls or even 50 beds in small cottages.

9 What you have is you have individual pods.  
10 And each one of those pods has 48 rooms.

11 Excuse me. The total pod population is 48  
12 and I believe that's two per room. Within the  
13 pods, the youth are broken into groups of 24 for  
14 purposes of transportation to and from the  
15 educational areas, to and from meals and so forth.

16 And they are also broken down in groups of  
17 12 for the various group sessions, which happen on  
18 a very regular basis.

19 So, we are really talking almost as if you  
20 would take, which would come from Tallahassee, you  
21 cannot really, you can say, of course, that  
22 Florida State is 30,000, 40,000, but you also have  
23 to look at how many are in classes, how many are  
24 in a particular dorm room, and so forth. And it's  
25 the same here.

1           You can't say this is a 300-bed facility, but  
2           you have to look at how that facility is  
3           structured. And it is structured ---

4           THE COURT: I'm going to hear how the  
5           facility is structured?

6           MR. DAKAN: Exactly.

7           THE COURT: What else am I going to hear?

8           MR. DAKAN: What you are going to hear is  
9           this, Judge: You first are going to find out  
10          that unlike halfway houses, unlike the one right  
11          here in the Detention Center, there are separate  
12          state-of-the-art classrooms available not only in  
13          the pods, but there is an education building,  
14          which contains its own classrooms, which contains  
15          its own computer room, which contains a complete  
16          shop with all of the necessary things for  
17          vocational exchange.

18          You can find that Pahokee has a complete  
19          state-of-the-art vocational, technical, and  
20          educational type of program, which cannot be  
21          offered and is not, in fact, offered in most of  
22          the halfway houses and so forth.

23          You are going to find, Judge, that it has  
24          complete on-site medical care and that includes  
25          dental care potential -- that includes all medical

1 care, it has its own dispensary, it has 24-hour  
2 medical people. Again, something that you cannot  
3 offer in a halfway house or one of the smaller  
4 community facilities.

5 You are going to find that there is a full-  
6 time psychologist and that there is a full-time  
7 psychological staff. Again, you don't find in the  
8 smaller units.

9 What happens, Judge, is that those people  
10 are out in the population, the youths can and do,  
11 in fact, come to these people while they are  
12 there.

13 The staff eats with these in the same room;  
14 they eat the same food, as the youth do. So there  
15 is a lot of contacts.

16 What you are going to find, Judge, is that  
17 all of the needs of the youths can be and are  
18 being met in this facility..

19 And, in fact, they are being met in a way  
20 that cannot possibly occur to the same level as in  
21 the smaller halfway houses and so forth. And  
22 that's why those places are going to get larger  
23 and larger as time goes by.

24 With respect to the specific allegations,  
25 I think what the Court is going to find is there



1 has been some interesting situations.

2 And we don't say that there were no problems  
3 there. Your Honor is aware of the problems and  
4 I won't go into that, but we did have problems.

5 And the CSC did have problems.

6 But you are going to find, Judge, is that  
7 both CSC and the Department have taken great pains  
8 to solve those problems.

9 Were there abuses? I'm sure there were.  
10 I'm sure we will hear more about them.

11 Were there were individuals that were  
12 dismissed as a result of that? Yes, there were.

13 Were there steps taken to assure that  
14 these abuses would not happen again? Yes, there  
15 were.

16 In fact, Judge, I think you will find that  
17 these are type of abuses that can occur in any  
18 facility. There is no way that we can absolutely  
19 orderly stop that kind of behavior; but we can do  
20 our best and we have done so in the Pahokee  
21 facility.

22 I think you will find that in the records  
23 I have seen of the youths that have been  
24 presented, that they have improved educationally,  
25 they have improved in terms of their relationships

1 to the society and at the same time, the public  
2 has been protected as is the primary  
3 mandate of the legislature from escapes, from  
4 disruptions to the smaller facilities and from  
5 crime that would occur as a result of either  
6 the disruptions or the escapes.

7 The bottom line, Your Honor, is that  
8 the existence of the community-based health which  
9 are a very important part of the continuum  
10 care that are provided by the Department, would  
11 probably cease to exist if it was not for the  
12 capability of the Department to separate those  
13 youths, which would be disruptive, which cannot be  
14 controlled in the small houses and any expert will  
15 say the same thing, by the way, that there are  
16 simply some youths that are not appropriate for  
17 type of houses that these folks would like to see.

18 And put them somewhere; where they get the  
19 types of treatment, the quality, we have already  
20 talked about in a safe attitude and then are able  
21 to step down and be productive members of active  
22 care program and ultimately to be more productive  
23 members of society.

24 So, I think, Judge, what you are going to  
25 find after you have heard all of the testimony in

1 this case, that what we are really talking about  
2 here is a difference in philosophy. There's  
3 nothing wrong with the philosophy that the Public  
4 Defender sponsors. My experts will agree with  
5 that.

6 Had we money to do it? It would be kind of  
7 nice to have smaller facilities everywhere.  
8 That's not the reality of where we are today.

9 Where we are today is that we have to look  
10 at what the people want. And we have to look at  
11 what kind of facilities can we build.

12 And I think Your Honor will be entirely  
13 satisfied that Pahokee meets the Level 6, excuse  
14 me, moderate risk criteria ---

15 Thank you.

16 THE COURT: All right, let's take a five to  
17 ten-minute recess and we'll start again.

18 Let's say, that clock is correct, we'll start  
19 promptly at twenty-five minutes of eleven.

20 (Thereupon, a discussion off the record  
21 was held; after which, a brief recess was taken.)

22 (10:25 a.m.)

23 THE COURT: Let's begin.

24 MR. DAKAN: Okay.

25 MS. OSBORNE: Yes, I'm calling J [REDACTED] M [REDACTED] as

1 our first witness.

2 THE COURT: J [REDACTED], I want you to raise your  
3 right hand.

4 Do you swear or affirm that your testimony  
5 will be the truth?

6 THE WITNESS: Yes.

7 THE COURT: Keep your voice up, please.

8 Thereupon:

9 J [REDACTED] M [REDACTED]

10 was called as a witness and, after having been first  
11 duly sworn, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. OSBORNE:

14 Q. Tell the Judge your name, please.

15 A. J [REDACTED] M [REDACTED], J [REDACTED] A. M [REDACTED].

16 Q. And how old are you?

17 THE COURT: Will you spell your name, last  
18 name?

19 THE WITNESS: M [REDACTED].

20 THE REPORTER: I didn't hear that, Your  
21 Honor.

22 THE COURT: M [REDACTED].

23 MR. DAKAN: Could we perhaps just move  
24 the microphone closer to him, Judge?

25 (Thereupon, a brief interruption.)

1 BY MS. OSBORNE:

2 Q. And how old are you?

3 A. Fourteen.

4 Q. Okay. And where are you currently at?

5 Where are you currently living right now?

6 A. With my grandma.

7 Q. Okay. Where have you been for the last ten  
8 months?

9 A. In the program.

10 Q. Okay, what's the name of the program?

11 A. Pahokee Youth Development Center.

12 Q. When did you arrive at Pahokee Youth  
13 Development Center?

14 A. January 27th.

15 Q. Okay. How long had that program been opened  
16 when you arrived, if you know?

17 A. I think since January the 18th.

18 Q. So, you were one of the first people to  
19 arrive?

20 A. The second crowd.

21 Q. Pardon me?

22 A. The second crowd.

23 Q. Second crowd, okay.

24 Try to speak louder, all right?

25 Tell us about what happened when you arrived.

1 Were you placed in orientation?

2 A. No. Before that, they had none of that. You  
3 just go straight to the unit, you know.

4 Q. Okay, orientation is something that has  
5 happened since you have arrived?

6 A. Yes.

7 Q. Okay. When you got there, tell us what your  
8 experience was? What were you told about the program  
9 and what happened ---

10 A. Put your hands behind your back, face the  
11 wall.

12 That's when I first came into the door.

13 Q. When you first came in the door, what were  
14 the first words that you heard?

15 A. Puts your hand behind your back, look at the  
16 wall, stay looking at the wall, do you know what I'm  
17 saying?

18 Q. Okay.

19 A. We had to stand up about a good fifteen  
20 minutes.

21 Q. Then what happened?

22 A. And then after that, they put us in a room,  
23 in a cell, then they gave us a haircut.

24 Q. And they gave you a haircut.

25 What was the name of the cell that you were

1 in?

2 A. Oh, it was just a normal cell.

3 Q. Okay. Aren't some of the cells done by  
4 letters, D-1 or E-2 or F-1, things like that?

5 A. That's the dorms.

6 Q. Okay. That's not where you were at yet?

7 A. No, I was in the processing.

8 Q. In the processing.

9 How long did you stay in that processing?

10 A. It was like a Phase 1 thing. Like Phase 1,  
11 you get a haircut. Phase 2, you go in the room and  
12 tell you what your medical concern is. Things like  
13 that.

14 Q. Okay. Did you have medical concerns?

15 A. No, ma'am.

16 MS. OSBORNE: You have to answer out loud  
17 because it is being recorded. Don't shake your  
18 head.

19 BY MS. OSBORNE:

20 Q. Had you previously been told what this  
21 program was going to be like, before you went up there?

22 A. Yes.

23 They say like it was going to be a camp or  
24 something.

25 Q. Okay. And what did you assume that meant,

1           that it was going to be a camp or something?

2           A.    That it is going to be all right. Like I can  
3           just do my time and get up out of there.

4           Q.    Okay. Is this the program that you have ever  
5           been to?

6           A.    Yes.

7           Q.    All right. How did you graduate from a  
8           program like Pahokee?

9                   Do you have to go through levels?

10          A.    Yes.

11          Q.    Okay. How many of them are there?

12          A.    Four.

13          Q.    Okay. And how long were you in Pahokee  
14          before you got to level, say, One, or Level Two, tell  
15          the Judge how you went through level, level?

16          A.    It's like a school, they got favoritism in  
17          there at the same time, but it's like a school thing.  
18          You got to maintain, but at the same time, you got a  
19          staff that like to test your anger.

20          Q.    Test your what?

21          A.    Your anger.

22          Q.    Your anger. If you get angry when they say  
23          something, it's like a treatment thing.

24                   After two weeks, you go to treatment. That  
25          we first came -- when we first come, you go to



1 treatment for two weeks.

2 After them two weeks, you still be on  
3 orientation. If you do thirty days, then you be on  
4 Level One.

5 Q. Okay.

6 A. You got to do sixty, to be on Level Two.

7 Q. All right.

8 So, the anger testing, is that a week-long  
9 thing or is that -- what is that?

10 A. It is an every-day thing. They do it every  
11 day.

12 Say you are in line and you got your hands  
13 behind your back, if you got your hands behind your  
14 back, they're going to come up to you and say something  
15 to criticize you.

16 Q. What would be an example of something that's  
17 been told to you?

18 A. Like say -- like say I was looking back, I  
19 was looking back and at the same time the staff is  
20 telling me to stay -- to look forward. Do you know  
21 what I'm saying?

22 Q. Right.

23 A. I'm looking back, because I'm hearing an  
24 argument going on back in the line.

25 It would be like, "Face forward, you

1 mudderfuck. Face forward, you mudderfuck."

2 Q. Is the tone and the language used by the  
3 staff typical of what you just told me?

4 You have to answer out loud.

5 A. Yes.

6 Q. Okay. Is cussing the norm, or is that the  
7 exception, or is it frequent, often, not at all?

8 A. Every day.

9 Q. Every day?

10 A. It's an every-day thing.

11 Q. Okay. Is it by almost all staff?

12 A. Not all. See, there's about two or three  
13 good staff that you can depend on, that they can help  
14 you out. They can help you get through the program.

15 Q. All right. And other than those two or three  
16 that help you get through the program, what are the  
17 other hundred or two hundred doing?

18 A. They trying to let you stay there, they're  
19 trying to keep you there.

20 Q. Now, when you say "they try to keep you  
21 there," or "they tried to get to your anger," give me  
22 an example or give the Judge an example, or examples of  
23 what you mean by that?

24 A. Like they'll get a pen and we'll be a group  
25 or something, they get a pen and paper, and they'll be

1       like, "See this pen, see the paper?" They cusses and,  
2       "If you ever look at me wrong or say something wrong,  
3       we're going to write your puss-ass up."

4                     Just like that, "I'm going to write your  
5       puss-ass up."

6             Q.     And that's done in group treatment?

7             A.     Yes.

8             Q.     That's the ---

9             A.     At the end.

10            Q.     What part of the treatment is group treatment  
11       supposed to be; what is it supposed to be doing?

12            A.     It's like a group thing. See, they got on a  
13       piece of paper, like you do this at a certain time, you  
14       go to lunch at a certain time --

15            Q.     Right.

16            A.     --well, they finally got that up, though. Do  
17       you know what I'm saying?

18            Q.     Would ---

19            A.     They finally put a paper up that saying that.

20            Q.     The things that are written on pieces of  
21       paper, are they manuals or regulation books that you  
22       have seen?

23                    You know, are there rules written down that  
24       you have been able to see, that are supposed to happen?

25            A.     No.

1 Q. No.

2 A. When I first came, they was telling me the  
3 rules.

4 Q. Are the rules consistent, do they stay the  
5 same every day?

6 A. No. To say, we would have such a time, do  
7 you know what I'm saying?

8 Q. You would have, I'm sorry, what is such a  
9 time?

10 A. Such-and-such a time, like rec.

11 Q. Okay, like rec?

12 A. Free time, free time.

13 Q. Okay.

14 A. You come out of the room and do whatever.

15 But at the same time, if we're in line and  
16 we're going to lunch, and somebody talk to somebody  
17 else, the whole dorm got us up. We got be on lock-  
18 down for that certain person.

19 Q. Uh-huh. And when you're in lock-down,  
20 describe to the Judge what lock-down means?

21 A. Locked in the cell.

22 Q. And how long can lock-down be for a dorm or a  
23 pod?

24 A. Until we get a snack or go somewhere like, go  
25 to lunch or something.

1 Q. Can lock-down be longer than a day?

2 A. Yes.

3 Q. How long can it be?

4 How long can a unit be on lock-down?

5 A. A good day.

6 Q. Okay.

7 A. Like until we go to breakfast or something.

8 We would go to breakfast, come back, go in the room,  
9 stay in the rooms till lunch.

10 Q. So, lock-down means at the time that it is  
11 not scheduled for either eating or education, you are  
12 locked in your cell?

13 A. Yes.

14 Q. And does that last longer than one day?

15 In other words, can a unit be on lock down for a week  
16 or two weeks or months even?

17 A. Yes.

18 Q. What's the longest you have been, your unit  
19 or you have been on lock-down?

20 A. For a week.

21 Q. For a week. And that just means other than  
22 scheduled activities, you have to remain in your cell?

23 A. Yes.

24 Q. Okay.

25 A. Say we all be good today, do you know what

1 I'm saying, you all be maintaining and doing good and  
2 staying on track, we'll still be on lock-down because  
3 certain staff, they like for us to be on lock-down.

4 Q. Okay. How does lock-down benefit the staff,  
5 why do they like you to be on lock-down?

6 A. Because they all do nothing, but sit around  
7 anyway and talk, talk about what happened last night  
8 and this and that and look at T.V.

9 Q. Do you have other than the two or three  
10 people that you referred to that tried to help you, are  
11 there any staff people that you trust or that you  
12 confide in?

13 A. About one or two.

14 Q. Okay. Are they in your pod, are they  
15 accessible?

16 A. No, ma'am.

17 Q. Where are they? I mean how do you get to  
18 them?

19 A. Like they're working different pods, do you  
20 know what I'm saying, sometime they work and could find  
21 me. And sometime, I just see them walking through.

22 Q. Okay. All right. But those are two that you  
23 trust or that you think are okay?

24 A. (No response.)

25 MS. OSBORNE: You have to answer out loud.

1 A. Yes.

2 BY MS. OSBORNE:

3 Q. Do you have a relationship with anyone?

4 A. No, ma'am.

5 Q. What level are you on right now?

6 A. Level Two.

7 Q. Okay. How is it that you have been in a  
8 program for ten months and you are in Level Two only?

9 A. It's like, say, certain staff come in, do you  
10 know what I'm saying, and you had treatment at that  
11 time, see, you had treatment on Wednesday, and we had  
12 treatment, certain staff come in that dislike you for  
13 no kind of reason.

14 They come in your treatment and they hold a  
15 conversation up and they would be like, "I think he  
16 should get his nose dropped, he has been disrespecting  
17 the staff, using abusive language and everything and  
18 this and that."

19 And knowing in your heart, you ain't saying  
20 nothing to that staff, do you know what I'm saying, and  
21 you try to express yourself in group, and he just won't  
22 listen to you.

23 Q. If you feel that the staff is saying that you  
24 know in your heart didn't occur, why don't you go to  
25 like a grievance procedure or why don't you ---

1 A. It don't work.

2 Q. Why doesn't it work?

3 A. You write a grievance, see, and you put it in  
4 the little box, you never hear about it.

5 Q. You never hear about it?

6 A. Unless you bring to a white shirt, and if you  
7 do bring it to a white shirt, they going to say  
8 something. When I handed this today, you don't see  
9 them, until you see them again.

10 Q. Now tell the Judge the difference between a  
11 white shirt and the other staff, because he doesn't  
12 know that term.

13 A. See, the white shirt, they say they had the  
14 juice, they had the power, do you know what I'm saying?

15 Q. They had the power?

16 A. Yeah.

17 Q. The white shirts?

18 A. Yeah, they can drop -- they can drop your  
19 level and, see, the white shirt, they bring in the  
20 needs. You tell them your needs.

21 Q. Okay.

22 A. See, the blue shirt, they just staff, do you  
23 know what I'm saying?

24 Q. Now, who do you primarily deal with: white  
25 shirts or blue shirts, the kids?



1 A. Blue shirts.

2 Q. Okay.

3 A. See, the blue shirt, they staff, they always  
4 in the dorm.

5 Q. Okay. So if you have a complaint about the  
6 blue shirts, then the proper procedure, according to  
7 Pahokee, right, is to go to the white shirts?

8 You have to answer out loud.

9 A. Yes.

10 Q. And when you go to the -- have you actually  
11 had to go to a white shirt and try to lodge a grievance  
12 about something, you, yourself?

13 A. Yes.

14 Q. And what happened?

15 A. They don't say, they talk to you, but they be  
16 telling you lies, do you know what I'm saying? You be  
17 like, "I need to talk to you right now."

18 "I'm doing something right now, you talk to  
19 me later, I'll get with you later."

20 Q. Do they, in fact, get with you later?

21 A. No, ma'am.

22 Q. Do you feel that it's useless to try to  
23 complain to anybody?

24 A. Yes.

25 Q. And why is it useless?

1           A.    Because you try, sometime people got problems  
2           and they try to express their problems and get it off  
3           their chest, do you know what I'm saying?

4                    But at the same time, the staff, they don't  
5           want to listen to you. See, they don't listen to you.  
6           One of them probably listen to you, but they won't be  
7           looking, they'd be like, "yeah, yeah". Do you know  
8           what I'm saying?

9           Q.    Uh-huh. Do you feel cared for by the staff?

10          A.    Excuse me?

11          Q.    Do you feel cared for by the staff?

12          A.    No.

13          Q.    Do you feel that they care about you?

14          A.    No.

15          Q.    Do you feel they care about you progressing  
16          and making your levels?

17                    You have to answer out loud.

18          A.    No.

19          Q.    Do you feel that anybody is trying to build  
20          you up?

21          A.    No.

22          Q.    Do you feel that anybody is trying to put you  
23          down?

24          A.    Yes.

25          Q.    In what ways?

1 A. Like criticizing.

2 Q. What kind of criticisms?

3 A. Like they won't have nothing to say, but in  
4 the group, but they'll bring up a conversation in a  
5 group by telling the youth what they don't like about  
6 hisself. It would be like, well, "You are a straight  
7 up pussing" -- do you know what I'm saying?

8 Q. This is how the staff is talking to you  
9 during the group treatment?

10 A. Street talk, just plain-out street talk.

11 Q. What if a kid tries to use that kind of  
12 language?

13 A. They get wrote up, go to confinement, or get  
14 physical -- your hands, they'll put their hands on you.

15 Q. Okay. Tell me about -- tell me about some  
16 physical hands-on experiences that you have either seen  
17 or that have occurred to you.

18 A. Like say, I'm in the line, and I'm looking at  
19 the staff because he's talking to the other kind, he'll  
20 be like, "What the fuck are you looking at?"

21 Do you know what I'm saying?

22 And I'd be like, "Well, I'm just looking."

23 Do you know what I'm saying?

24 And then he'll come up toward me, and he'd be  
25 like, "You bucking, you bucking?" And he'll start

1 grabbing me and restraining. And then I start  
2 resisting. And then I say, "Hey, I'm not going to  
3 allow no person to put their hands on me, because they  
4 are none of my peoples."

5 Q. Right.

6 Tell me, you used the term "bucking"; explain  
7 what that is and that's a common term in Pahokee,  
8 explain that term.

9 A. Like something like resisting, like you don't  
10 care about a program, you do just whatever you want to  
11 do.

12 Q. Does "bucking" sometimes have to do with like  
13 physical, you know, moving, like resisting?

14 A. Yes.

15 Q. Can "bucking" be verbal, by either cussing or  
16 not obeying, can that also be considered "bucking"?

17 A. Yes.

18 Q. Okay.

19 A. Like you just don't care, you just do  
20 whatever you want to do. Walk around and ---

21 Q. Uh-huh. Are -- do the staff -- or do you  
22 feel baited to try to get you to buck?

23 Do you feel that people bait you or test you,  
24 try you?

25 A. Yes.

1 Q. All right.

2 A. They'd be like, "Man, you've been here, what,  
3 for eight months" -- do you know what I'm saying -- and  
4 I'd be like, "No, I'm just holding it down because if I  
5 do buck, it ain't going to get me nowhere. I'd be  
6 staying here."

7 Q. Okay.

8 You -- if you do buck, as you say, or if you  
9 resist or if you cuss, you said that you get written  
10 up, right?

11 A. Yes.

12 Q. Or you can be confined?

13 A. Yes.

14 Q. And I think you also said or you can have  
15 hands laid on you?

16 You have to answer out loud.

17 A. Yes.

18 Q. Tell me specifically what acts of physical  
19 abuse that you have either seen or have occurred to  
20 you?

21 A. I've seen a lot, to tell you the truth.

22 Q. Well, tell me a lot.

23 A. Sometimes -- some days I get my hands, they  
24 put their hands on me.

25 Q. Okay.

1           A.    And at the same time, sometime I resist and  
2 sometimes I just let it go or just let them do what  
3 they got to do and send me to confinement.

4           Q.    Now, when they lay their hands on you, how is  
5 it that you end up in confinement?

6           A.    Because it's almost there.

7           Q.    Is that how they ---

8           A.    See, that's the way they write it, they say  
9 when they do the paperwork, they'd be like, you know,  
10 you-all be -- we going add some more stuff to it, see,  
11 because when they do the paperwork, they know that it  
12 be petty, that's why they add more things to it.

13          Q.    You mean the reason that the bucking that you  
14 did would be petty, but it wouldn't be enough for  
15 confinement?

16          A.    Yes. They add some more things to it, so you  
17 can stand alone.

18          Q.    So you can stay in confinement?

19          A.    Then you do about, you go fourteen days in  
20 confinement. They don't water on you if you go to  
21 sleep, see, if you'd be in a cell like that, you're  
22 going to go to sleep regardless, because you have no  
23 mat, no none, just to sit on the cell floor.

24          Q.    Describe the room of solitary confinement,  
25 describe it.

1           A.    See the door, the door is like a big iron  
2 door.

3           Q.    Big iron door.

4           A.    And you got like a little food thing, where  
5 you pass the trays.

6           Q.    They pass the tray through the door?

7           A.    Yeah. Slide.

8           Q.    Okay.

9           A.    It's like a prison confinement. It would be  
10 so cold up in the cells, and they just leave you in  
11 there, see, now they got jumpers. See, before that,  
12 they put you in there with blue shorts.

13          Q.    Okay. And at what time is the mattress taken  
14 off the bed in the morning?

15          A.    In the morning, right about seven o'clock.

16          Q.    And what time is the mattress put back in the  
17 solitary confinement room?

18          A.    Nine o'clock.

19          Q.    So, from seven o'clock to nine o'clock, what  
20 are you doing?

21                What's J [REDACTED] M [REDACTED] doing; what's anybody  
22 doing in there?

23          A.    With the mat or without the mat?

24          Q.    What are you doing: staring at walls?

25          A.    Yes.

1 Q. What are you doing?

2 A. Looking through a window, we just stand on  
3 the walls.

4 Q. Uh-huh. If you try to lay down on the bed  
5 and now, when the mattress is taken away from the bed,  
6 what's left of the bed, just a frame?

7 A. Yes.

8 Q. What kind of material is the frame?

9 A. An outer frame.

10 Q. When the mattress is taken from the iron  
11 frame, can you sit on that bed during solitary  
12 confinement?

13 A. Yes.

14 Q. That's allowed?

15 A. Yes.

16 Q. Can you sleep during the day?

17 A. No.

18 Q. What happens if you try to sleep or if you  
19 just fall asleep?

20 A. They throw water on you.

21 Q. They throw water on you?

22 A. They throw water on you and they come in  
23 there and they start putting their hands on you, you  
24 know what I'm saying, real rough.

25 "Hey, get your ass up, you know you don't



1 sleep in confinement."

2 Q. Okay. And this can go on for up to fourteen  
3 days, you can stay in confinement?

4 A. Yes.

5 Q. Now, do you get education while you're in  
6 confinement, do you get to go to school, or does any  
7 education get brought to you?

8 A. No, ma'am.

9 Q. Do you get any books or any way to read or  
10 improve yourself?

11 A. No, ma'am.

12 Q. Do you get a bible or any spiritual relief?

13 A. None of that.

14 Q. Do you get to write letters of any kind?

15 A. No, ma'am.

16 Q. Or keep a journal?

17 A. It's just straight out confinement, you don't  
18 get nothin.

19 Q. How about a counselor, would somebody come  
20 and talk to you and talk to you about maybe anger or  
21 things like that or just talk to you about depression,  
22 anything?

23 A. No.

24 Q. Okay. So you have food that comes through a  
25 tray. How many times a day -- you have to answer out

1 loud --

2 A. Yes.

3 Q. --how many times a day?

4 A. Two times a day.

5 Q. Is it the same food that you would get in the  
6 cafeteria?

7 A. Yes.

8 Q. Is it the same portions?

9 A. No.

10 Q. What ---

11 A. Sometimes, like say, you was knocking on the  
12 door for some toilet paper or something, sometime they  
13 shackle you, sometime they'll let it go and it will be  
14 like okay, you begging right now by knocking on the  
15 doors, waiting until the trays come, I'm going to feed  
16 you, do you know what I'm saying. Then he'll put milk  
17 all over our food or wait until the food get real cold,  
18 and sometimes there are bugs in the food.

19 They ain't never did it to me, but I see it  
20 happened to other people.

21 Q. Okay. So if you're knocking on the -- have  
22 you actually been in confinement and knocked on the  
23 door to request toilet paper?

24 A. Yes.

25 Q. That actually happened to you personally?

1 A. Yes.

2 Q. And the response to your request for personal  
3 hygiene was what, for toilet paper, what did they tell  
4 you?

5 A. They didn't tell me nothin. That's when they  
6 came in with the shackles and they started to shackle  
7 me.

8 Q. And they started shackling you because you  
9 knocked on the door; right?

10 A. Yes.

11 Q. And you're not supposed to bother anybody  
12 ever; right?

13 A. Yes.

14 Q. How did they shackle you?

15 A. They like -- like put the shackles on, then  
16 they put the handcuffs on, then they put it with the  
17 shackles, do you know what I'm saying?

18 Q. Okay. So your wrists, these are your wrists?

19 A. Like Donald Duck.

20 Q. Like Donald Duck?

21 A. Yeah, they handcuff them with the shackles.

22 Q. So, your wrists are shackled to your ankles.

23 A. Yes.

24 Q. And that happened to you?

25 Answer out loud.

1 A. Yes.

2 Q. And that happened to you after a request for  
3 toilet paper?

4 A. Yes.

5 Then when you try to explain that to him.

6 Q. What happens when you try to explain, "I just  
7 needed some toilet paper, I wasn't trying to disturb  
8 you"?

9 A. They don't hear.

10 Q. What do you mean they don't hear?

11 A. They be like ---

12 Q. They don't hear or they don't pay attention?

13 A. They don't pay no attention.

14 Q. How long were you shackled like that, after  
15 that request?

16 A. About two hours.

17 Q. And then what happened?

18 A. And I was begging him, I was begging him to  
19 take it off. They acted like they won't hear me.

20 Q. Okay.

21 MS. OSBORNE: Do you want a stipulation or  
22 how are we doing this?

23 MS. DAKAN: Just the only two that we would  
24 object to is the one we already ---

25 (Thereupon, discussion between

1 attorneys.)

2 MS. OSBORNE: Judge, we had a stipulation  
3 agreement with the Department as to some  
4 photographs that were taken at Pahokee, okay, and  
5 at this time, I would like to approach the witness  
6 and show him.

7 THE HEARING OFFICER: Has it been marked with  
8 the numbers?

9 Did you get all the photographs, if not now,  
10 during a break, you should mark them.

11 MR. ROSENTHAL: That is actually numbered,  
12 that is numbered right there.

13 MS. OSBORNE: Do you want stipulate during  
14 the break ---

15 THE HEARING OFFICER: You know, you can put  
16 a number on this one, if you want a  
17 preliminary ---

18 MR. ROSENTHAL: They are sequentially  
19 numbered.

20 MS. OSBORNE: It's 42 and they are  
21 sequentially numbered and I think the Department  
22 has the same numbers.

23 If they don't, we have copies.

24 THE HEARING OFFICER: All right. We'll use  
25 that number.

1 MS. OSBORNE: Okay.

2 Right now, this is No. 42, just for the  
3 record.

4 (Thereupon, the photos were marked for  
5 Identification as Defendant's Exhibit  
6 No. 42.)

7 BY MS. OSBORNE:

8 Q. I'm going to show you a picture, James, and  
9 ask if you recognize that?

10 A. Yes.

11 Q. What is it?

12 A. And before that, before the people from  
13 Tallahassee start coming, they had none of that on the  
14 wall.

15 Q. None of what?

16 A. The paint.

17 Q. Okay.

18 A. It was just a plain wall and the rooms -- and  
19 the rooms don't normally be that clean.

20 Q. What is this, what room is this?

21 You have to say out loud.

22 What is this?

23 A. Confinement.

24 Q. That's confinement.

25 Is this the kind of room that you were just

1 describing that you were shackled in?

2 A. Yes.

3 Q. Okay.

4 And tell me what's different since you have  
5 been there ten months from when you first got to  
6 Pahokee?

7 A. The paint.

8 Q. When did that paint start happening, if you  
9 remember the change?

10 A. When I came from detention.

11 Q. Since you came back from Detention Center?

12 A. Yes.

13 Q. Okay.

14 A. That's when I came back.

15 Q. When was that, what month was that, do you  
16 remember?

17 A. August.

18 Q. In August. So you got there in January and  
19 this decor was added in August?

20 A. No, September sometime.

21 Q. Or September, this paint?

22 A. That's when I came back.

23 Q. So, right now how long have you been on Level  
24 Two?

25 A. It's like an on-and-off thing, you be on

1 Level One and say you get at Level Three, then you get  
2 no -- then you'll be right back at Level Two and Level  
3 Three and Level Four ---

4 Q. Do you -- do you have any clear idea what you  
5 are supposed to do to get from one level to another?

6 A. Maintain.

7 Q. Pardon me?

8 A. Maintain.

9 Q. Maintain. And what is maintain, what does  
10 maintain mean?

11 A. That means like do things which you're  
12 supposed to do.

13 Q. Right.

14 And why is it then that it's taken you so  
15 long or why are you still back at the earlier levels  
16 even after ten months?

17 A. Too much.

18 Q. What's too much?

19 A. I mean you struggle, you mean, you got to  
20 struggle many times.

21 Q. What, describe the struggles that's occurring  
22 in the attempt to maintain at this program?

23 A. You got to take criticisms. You got to take  
24 when they walk up to your face and tell you this and  
25 this and this and that, do you know what I'm saying,



1       like it's a boot camp.

2               Q.    Uh-huh.

3               A.    You got to take, when the staff put their  
4       hands on you, you got to take.

5                    When everybody got to suffer for one person.

6               Q.    Right.

7               A.    I mean you got to take a lot of things.

8               Q.    Do you have access to an Abuse Hotline?

9               A.    Yes.  They don't really do nothing.

10              Q.    Tell me about and you had to use the Abuse  
11       Hotline before?

12              A.    Yes.

13              Q.    Okay.  Tell me what occurred and what  
14       reaction you got?

15              A.    You see, the staff, they put their hands on  
16       you, but at the same time, you'd be like, "I want to  
17       call 100-ABUSE."

18                    They don't do nothing anyway, unless they get  
19       paid.  Do you know what I'm saying?

20              Q.    That's what the staff says to you?

21              A.    They say -- yeah, they say, "That's just a  
22       break for me."

23                    All I do is sit in a sofa all day.

24              Q.    What do you mean it's a break for the staff  
25       to get called from the Abuse Hotline?

1                   What happens to the staff?

2                   A.    They just sit in the sofa, the sofa room, and  
3                   push buttons.

4                   Q.    You mean they are removed from you for a  
5                   while?

6                   A.    Yes.

7                   Q.    And they go to a different place?

8                   A.    For a week.

9                   Q.    For a week. Now, when they come back, are  
10                  they in charge of you?

11                  A.    Yes.

12                  Q.    So they are back in charge of the person who  
13                  ratted them out and called the Abuse Hotline?

14                  A.    Yes.

15                  Q.    Now, is there ever any retaliation for that,  
16                  getting even?

17                  A.    Yes.

18                  Q.    Can you describe that? .

19                  A.    It happened to me before I went to the  
20                  Retention Center.

21                  Q.    Okay. Tell me.

22                  A.    See, they cook right, see, what happened  
23                  between me and him, he was the one who started that.

24                  Q.    Who is that guy?

25                  A.    That's a white shirt.

1 Q. Okay.

2 A. So, he came up in my room and I had some  
3 photographs --

4 Q. Okay.

5 A. --but they were inappropriate and I was just  
6 selling them for snacks, do you know what I'm saying?

7 Q. Uh-huh.

8 A. Other people, they have them all on the wall,  
9 I mean Playboy magazines and everything on the wall.  
10 They don't say nothin about that, but when they see me  
11 with something I drew, he walked up in there, he turned  
12 to me to give him those photographs.

13 I'm telling them, "I ain't showing nobody. I  
14 ain't just flashing them to anybody."

15 He said, "Give me those photographs." So I  
16 wouldn't give them to him at first. And then he did  
17 all that, so I said, "Hey, give him, he wants them up."

18 Q. Why did you give them to him eventually?

19 A. Because he start putting his hands on me, do  
20 you know what I'm talking about?

21 Q. Did you resist that time, did you buck?

22 A. Yes.

23 Q. Okay. Go ahead, keep going.

24 A. Then I calmed down and he start walking up,  
25 he walked up on me again and he told me, "You think you

1 -- you think you are big, a big man, you think you're  
2 B-21, B-21."

3 Do you know what I'm saying. And he start  
4 putting his hands on me and that's when I start  
5 resisting.

6 Q. Where did he put his hands, when he puts his  
7 hands on you?

8 A. He started restraining me, but then at the  
9 same time, when I was resisting, he just say, "Fuck all  
10 the training shit" and he just start getting to screw  
11 stuff.

12 Q. He said that out loud: "Fuck all the  
13 training shit" and did his own thing?

14 A. Yes, yes.

15 Q. And that was after that, that you called the  
16 Abuse Hotline?

17 A. That was before that.

18 Q. Okay. Oh, so this is ---

19 A. This is before anything, any of that  
20 happened.

21 Q. Okay.

22 A. And he threw me on the floor, do you know  
23 what I'm saying?

24 Q. Where he started choking me out. You see,  
25 it's a big dude and he started choking me out.

1 Q. How was he choking, where was his hands?

2 Put them on your body.

3 A. On my neck, like this.

4 Q. A forearm around your neck, kind of thing?

5 A. Yes.

6 Q. And you're on the floor?

7 A. Yes.

8 Q. How big is this guy?

9 A. Big dude.

10 Q. Okay.

11 A. He ain't big and fat, but he big a dude, do  
12 you know what I'm saying?

13 Q. Uh-huh.

14 Do you feel safe in Pahokee; personally safe?

15 A. No.

16 Q. Do you feel safe from staff?

17 A. No.

18 Q. Do you feel safe from the other kids?

19 A. No.

20 Q. Have you ever had incidences with the other  
21 children; fights?

22 A. Yes.

23 Q. Okay.

24 What is the staff's participation, or what is  
25 the staff's response, when kids are fighting kids?

1           A.    "Go ahead and fight." Do you know what I'm  
2           saying?

3           Q.    Uh-huh.

4           A.    They jump you, hey, they just jump you. It's  
5           over.

6                    If you call 100-ABUSE, that ain't going to  
7           work.

8           Q.    Have you know a person named R [REDACTED] from  
9           Orlando?

10          A.    Yes.

11          Q.    Who is that person?

12          A.    He's a gang member.

13          Q.    He was a kid, though, right, in the Pahokee  
14          facility?

15          A.    Yes.

16          Q.    Was he -- was he in your pod?

17          A.    Yes.

18          Q.    Okay. Tell me about you and R [REDACTED] in an  
19          incident that occurred.

20          A.    See, that happened Friday, with the staff,  
21          they were out there, do you know what I'm saying?

22          Q.    Out where? I don't know where you are now.

23          A.    They was like out there in the car, like he  
24          wasn't no like there, it was like in the dorm.

25          Q.    Okay.

1 A. So it was like ---

2 Q. So you're in the dorm, but not in the  
3 individual cells, just sort of a general living area?

4 A. Yes, he was out.

5 Q. Oh, R [REDACTED] was?

6 A. That's one of their favorites, so he was out  
7 and I was in.

8 Q. You were in where?

9 A. In the cell.

10 Q. Okay, your room, essentially?

11 A. Yes.

12 So he was like, "What's wrong, do you want to  
13 throw a fade right now?"

14 "What's up?"

15 Q. Who is saying this now?

16 A. R [REDACTED].

17 Q. R [REDACTED] is saying, "What's up, you want to  
18 throw" -- the what?

19 A. Throw a fade, a fight.

20 Q. A fight. To you?

21 A. Yes.

22 Q. Okay. Is the staff able to hear this?

23 A. Yes, they were standing right there.

24 Q. Okay.

25 A. All four of them, just like this, just

1 looking.

2 Q. Okay. For the record, he has his arms  
3 crossed across his chest and his hands are under his  
4 arms.

5 Go ahead.

6 A. Yes.

7 Q. All four staffers are in that position --

8 A. Yes.

9 Q. --what did that position say to you?

10 When you see somebody in that position, what  
11 does it say to you?

12 A. I figured he was getting ready to do  
13 something.

14 Q. Uh-huh.

15 A. So, when he told me that, "Do you want to  
16 throw the fade", I said, "Hey, whatever"; do you know  
17 what I'm saying. How about it?

18 So, he went by and popped the door. And when  
19 he popped the door --

20 Q. This the kid, R [REDACTED]?

21 A. Yes.

22 Q. He popped the door to your cell?

23 A. Yes.

24 Q. Okay.

25 A. He popped the door and when I came out, I



1 stood by the door. He was like, "What's up, what do  
2 you want to do?"

3 So, I said, "Hey, you run up on me, you're  
4 the one asking for a fade, so you don't want to beat  
5 me, so what's up?"

6 So, he ran toward me and he had on a cast at  
7 that time. He had on a cast.

8 Q. The boy did, R [REDACTED]?

9 A. Yes.

10 He fade one time, so I thought he wanted to  
11 fight, so I walked back in the room and he hit me, do  
12 you know what I'm saying, right here, that's why I got  
13 that scratch.

14 Q. That's why you have that scar?

15 That's recent?

16 A. Yes. We just started fighting for a good  
17 fifteen -- fifteen to twenty minutes.

18 Q. Where is the staff?

19 A. They was right there looking.

20 Q. Are they -- why aren't they breaking it up?

21 A. Because they don't care. They like the  
22 excitement.

23 Q. They like the excitement?

24 A. Yes.

25 Q. Where's the cast on R [REDACTED]?

1 little sub-groups or gangs, you know, based on  
2 whatever, where you're from or what you look like or  
3 something like that?

4 A. Yes.

5 They go like one-by-one, you had to tell the  
6 person one-by-one, "Hey, where are you from; what's  
7 your name; what age" and this and that.

8 Q. And so is there rivalry within like some  
9 group of boys and another groups of boys within the  
10 pods?

11 A. Yes.

12 Q. Does that rivalry, you know, what does that  
13 do in terms of your safety?

14 A. What do you mean?

15 Q. Well, what kind of -- what kind of -- when  
16 you have a rivalry like that within -- within boys that  
17 you have to live right next to, how does that make you  
18 feel?

19 A. It makes you feel like you're not safe. Do  
20 you know what I'm saying?

21 Because you're in the cell with somebody from  
22 a different town and at the same time, you don't know  
23 him.

24 Q. Right. So everybody is a little suspicious?

25 A. Yes.

1 Q. Okay. So you're having this fight with  
2 R [REDACTED], you get punched, and then what happens?

3 This goes on for fifteen minutes.

4 A. It's over, because it was dead, so ---

5 Q. When you say, "It's supposed to be dead,"  
6 what does that mean?

7 A. Because it is supposed to be over with.

8 Q. And over with means what, that it won't get  
9 written up, that it won't get referred to again; what  
10 does that mean?

11 A. It mean that you don't get wrote up, you  
12 don't get nothin. It's just something that you got off  
13 of your chest.

14 Q. Okay. So, this is like a staff-tolerated  
15 fight and everybody looks the other way; right?

16 A. Yes.

17 Q. Then what happened.

18 A. They sent us to medical.

19 Q. Okay. And at medical, what happened?

20 A. And at the same time, I was agreeing with it  
21 too, because me and him had a problem for a long time.

22 That would be like, "Hey, we were  
23 horseplaying, we were horseplaying then, I got hit."

24 Q. Who came up with that word: horseplaying?

25 A. The staff.



1 Q. Okay. Why did they even need to come up with  
2 a word for what happened?

3 Was that because you went to medical?

4 A. Yes.

5 Q. So how was it written up?

6 A. That we were horseplaying. None of that was  
7 written up, but in medical, it was written up.

8 Q. Okay.

9 A. They had us come ---

10 Q. All right.

11 A. --but when he came in, he was all swollen, he  
12 was swollen. Do you know what I'm saying?

13 Q. Okay. That's Rollins?

14 A. Yes.

15 Q. So medical made some -- asked some questions;  
16 right?

17 A. Yes.

18 Q. And you guys told him it was horseplaying?

19 A. I ain't tell them nothin exactly.

20 Q. Okay, what did you tell him.

21 A. I told him -- where he said, "Well, how did  
22 you get that little scar?" And he's be like, because I  
23 used to always come in medical, because I was always  
24 fighting. "I hope you haven't been fighting again.  
25 Where did you get that little scar from?"

1 "I was fighting."

2 I ain't going to lie to him, it'll be like,  
3 "Hey, I will fight."

4 Q. Uh-huh.

5 A. I'm squared up, so he say, "Where did you all  
6 fight?" He said nothin, so we went back to the dorm.

7 It was supposed to be dead, over with,  
8 squashed.

9 Q. Okay.

10 A. So this morning --

11 Q. The next morning?

12 A. --the next day, yes, the next day, he's  
13 talking to a buddy from Orlando telling him about what  
14 happened.

15 Q. This is R [REDACTED]?

16 A. Yes.

17 Q. Okay.

18 A. And then I'm sitting by the room, I'm posed  
19 up by the room on the wall, like this, do you know what  
20 I'm saying, just looking at him.

21 And he was like, "Hey, what's that dog?"  
22 "What do you want to do? We didn't do shit last  
23 night."

24 Do you know what I'm saying?

25 He said, "I didn't want to fade last night,

1        what do you want to do right now?"

2                    So, that's what happened, do you know what  
3        I'm talking about?

4                    So at the same time, he had his little crowd,  
5        a little crowd was with him.

6                    Q.    How little was this crowd?

7                    A.    It was a big crowd.    Do you know what I'm  
8        saying?

9                    Q.    Well, ten?

10                   A.    About a good twenty.

11                   Q.    Twenty, twenty Orlando kids?

12                   A.    Yes.

13                   Q.    Okay.

14                   A.    It was all in the little space where the  
15        shower is at.

16                   Q.    Okay.

17                   A.    So I had a little stick with me, do you know  
18        what I'm saying -- and the stick was hanging out of the  
19        door, so I grabbed the stick and ran over there and I  
20        caught one of them.

21                   But when I ran over there, one of them was  
22        about to hit me, that's why I caught him with the  
23        stick.

24                   When I caught him with a stick with a pod,  
25        they all rushed me.

1 Q. Uh-huh. Where's the staff?

2 A. They was over there by the panel board --

3 Q. Okay.

4 A. --calling for Assistance, Code One.

5 So when he called for assistance, they all  
6 jumped on me, you see, I had no backup, they all jumped  
7 on me.

8 Q. All twenty?

9 A. Yes, but they didn't do nothin, like not  
10 serious, like swolled me or nothin, he just scratched  
11 me all up.

12 So, at the same time, they sent me to  
13 confinement. See, that's the problem. They sent me to  
14 confinement, but they didn't send them to confinement.

15 Q. So none of the people who jumped you got  
16 confinement, but you got confinement?

17 A. Yes.

18 Q. Okay.

19 At that time that you went to confinement,  
20 how long did you stay?

21 A. For good six days.

22 Q. Six days. Did you have any education during  
23 those six days?

24 A. No, ma'am.

25 Q. Any counselling?



1 A. No, ma'am.

2 Q. Any books?

3 A. None of that.

4 Q. Any Bible; any pencil and paper?

5 A. No, ma'am.

6 Q. Were you shackled during those six days or  
7 unshackled during that confinement?

8 A. I was shackled.

9 Q. Okay.

10 Did you have any water thrown in there during  
11 those six days?

12 A. No, ma'am.

13 Q. You had water thrown in there before when you  
14 were in confinement; right?

15 A. Yes.

16 Q. Okay.

17 A. That was in March sometime.

18 But see, when the people from Tallahassee was  
19 coming in now, they was giving out news, do you know  
20 what I'm saying: "People from Tallahassee coming in".

21 Q. They were telling you guys people from  
22 Tallahassee were coming here?

23 A. No, they was telling the staff and I was  
24 noticed that, you know, I was noticing it.

25 Q. Okay. Would there be changes when people

1 from Tallahassee or people from the outside world would  
2 come?

3 A. Oh, yeah. Yeah..

4 Q. Tell me about the changes.

5 A. The food, the food get better. Do you know  
6 what I'm saying?

7 Q. Yeah.

8 A. They cook better food. I mean, the food,  
9 they just cooked food because they know the people  
10 coming.

11 Q. Okay.

12 A. Do you know what I'm saying? He tried to  
13 treat people good and everything all right, like they  
14 do in the program.

15 Q. Right. And what happens when the people from  
16 Tallahassee or people from the outside world leave?

17 A. They go back with the same thing.

18 Q. And what's the same thing?

19 A. Meat, like cold-meat patties; mashed  
20 potatoes.

21 Do you know what I'm saying? Sometime, hair  
22 be in it, flies, same old thing.

23 Q. Uh-huh. What about ---

24 A. They see that, they keep coming back and  
25 forth, the people from Tallahassee. They keep going

1 back and forth to the program, now they are trying to  
2 make everything look good.

3 Because I mean in the school area, they had  
4 nothing on the walls, but when I came back from  
5 Detention, I see Martin Luther King on the wall --- Do  
6 you know what I'm saying?

7 Q. When was that, like in September?

8 A. Yes.

9 Q. Okay. What other changes did you see since -  
10 - from ---

11 A. Paint.

12 Q. Painting.

13 A. Because before that, it was writings  
14 everywhere on the way, paint, all types of things.

15 Q. Okay.

16 A. In Confinement, they give jumpers now, blue  
17 jumpers, they give blue jumpers; before they don't give  
18 you none of that.

19 Q. You were in your shorts?

20 A. Yes.

21 Q. Was it cold?

22 A. Yes.

23 Q. Was the water cold that was thrown in there?

24 A. Yes.

25 Q. Tell me about your education. What grade

1 were you in when you went up to Pahokee?

2 A. Eighth.

3 Q. Where do you think you are at now, after ten  
4 months?

5 A. They said I supposed to be in the ninth.

6 Q. Yeah. Do you feel like you have progressed?

7 A. No, because when you're in school anyway, you  
8 just get answers, they give you the whole answer book.

9 Q. What do you mean, "They give you the answer  
10 book in school"?

11 A. It be like, "Well, use this calculator."

12 You'd be like, "I don't want to use that  
13 calculator, I want to learn on a piece of paper."

14 Do you know what I'm saying?

15 Q. What are you talking about: mathematics?

16 A. Yes, mathematics, everything.

17 Q. Like you want to do long hand?

18 A. Yes.

19 Q. And they give you a calculator?

20 A. Yes.

21 Q. What do they say when they give you the  
22 calculator?

23 A. It be like, "Go ahead and use, go ahead and  
24 figure those problems out with that calculator."

25 I mean, they don't express it on the board or

1       nothin. You just do it on the calculator.

2           Q.    Why do they want you to do it that way?

3           A.    I guess they lazy.

4           Q.    Huh?

5           A.    I guess they don't want us to learn nothing,  
6       I guess they're lazy.

7           Q.    You guess they're lazy?

8           A.    Yes.

9           Q.    Does it save time, if they give you the  
10       answers?

11          A.    Yes.

12                Sometime, they just see you go up there.

13       Other people, they go up and they take the answer book.

14       They just copy down everything.

15          Q.    And then do you get homework at night?

16          A.    No, ma'am.

17          Q.    So, there's no homework to do after dinner at  
18       night, no assignments?

19          A.    No, ma'am.

20          Q.    Any books in your room?

21          A.    Yes.

22          Q.    Okay. Are you allowed to take books in your  
23       room?

24          A.    Yes, now.

25          Q.    Now. Were you allowed to take books in your

1 room before July?

2 A. No.

3 Q. Were you -- are you allowed to have, you were  
4 talking about pictures and posters or some  
5 inappropriate posters, are you allowed to have things  
6 on your wall?

7 A. Yes. There's like three spaces.

8 Q. Okay.

9 A. We got like, like square boxes, three square  
10 boxes, you got to have just your family. Do you know  
11 what I mean?

12 Q. Okay. So you are allowed a family, uh-huh.

13 A. But at the same time.

14 Q. Have you always been allowed to have that?

15 A. No.

16 Q. When did that start?

17 A. It started like in March.

18 Q. That they let you ---

19 A. Everybody had to complain about it. Do you  
20 know what I'm saying?

21 Q. Okay.

22 A. You usually had to complain about it, where  
23 my people was bringing me pictures, you what I'm  
24 saying, of them, at least I could hang them up on the  
25 wall or do something.

1 Q. Right.

2 What kind of family have you had?

3 A. Just I was in -- they probably once in a  
4 while, something like every two days out of a few  
5 weeks.

6 Q. Well, I mean you have been there ten months.  
7 Have you seen your parents five times, ten times?

8 A. Three times.

9 Q. Three?

10 A. I tell them, you know what I'm saying, "Don't  
11 come, you know, until March."

12 Because they spend, what, two hours just to  
13 get there and they don't have enough time to speak to  
14 me, they only have about what thirty minutes, an hour -  
15 -

16 Q. Uh-huh.

17 A. --and if they get there really late, they  
18 don't have no time to speak to me; because visitation  
19 starts at a certain time. It start at nine o'clock.

20 Q. Uh-huh. Oh, so like if your sleeping a  
21 particular hour, you, J [REDACTED] M [REDACTED], get one hour and if  
22 they are a few minutes late, that you can't reschedule,  
23 that's it?

24 A. Yes.

25 Q. Do you get to talk to them on the phone?

1           A.    No.  To tell you the truth, every couple of  
2           weeks.  You got to keep -- you got to keep complaining  
3           about it, do you know what I'm saying?

4           Q.    Okay.

5           A.    I don't speak to my family at all.  They'd be  
6           like, well, if you do speak to them, that would be  
7           what, in a month?  A month later?

8           Q.    So, how do you think your time in Pahokee,  
9           what impact do you think it has had on you and your  
10          family?

11                   Do you think it has brought you and your  
12          family closer?

13                   You have to answer out loud.

14          A.    No.

15          Q.    And you have to explain.

16          A.    Because I ain't speak to them in a long time.

17          Q.    Right.

18                   When you do speak to them, when they visit --

19          -

20          A.    I mean I didn't speak to them in so long,  
21          that I could probably see them right now and I don't  
22          even know them.

23          Q.    During the three times that you got to see  
24          them, did you get to see them privately, like get to  
25          have a conversation just you and them, or are you in a



1 room with other people?

2 A. On the phone?

3 Q. No, on visitation, contact visitation.

4 A. With other people.

5 Q. You're in a room with other people?

6 A. Sometimes, other people would be loud, do you  
7 know what I'm saying?

8 Q. Are you in the room that I interviewed you in  
9 that time I was up a couple of weeks ago?

10 A. Yes.

11 Q. Okay. How many other people would be in the  
12 room with parents at the same time you are trying to  
13 talk to yours?

14 A. Parents that come to visitation?

15 Q. Yeah. Would there be like ten other people  
16 in the room, twenty total?

17 A. Yes.

18 Q. How many, do you think?

19 A. A good twenty, twenty-five.

20 Q. Okay. How big is that room? Is that room --  
21 can you tell the Judge in relation to this courtroom,  
22 how big that room is you are talking about?

23 A. It's about the same size it is.

24 Q. Uh-huh.

25 So, there would be about twenty people all

1           trying to talk for half an hour to one hour; right?

2           A.    Yes.

3           Q.    Do you feel that you are respected while you  
4           are in this program?

5           A.    No, ma'am.

6           Q.    Do you feel that you were taught to respect  
7           other people and their dignity?

8           A.    Yes.

9           Q.    How were you taught that?

10          A.    By my parents.

11          Q.    Uh-huh. Do you think that was taught to you  
12          by Pahokee, either by their words or by their example,  
13          or just your parents?

14          A.    Just my parents.

15          Q.    Okay. How has it made you feel as a person  
16          in terms of your self-respect and your dignity to spend  
17          ten months there?

18          A.    I feel like I just got disrespect. Do you  
19          know what I'm saying?

20                    It wasn't right, but at the same time, I deal  
21          with it.

22          Q.    You deal with it?

23                    Do you have any idea when you're going to be  
24          released?

25          A.    24th, but they say they changed my release

1 date.

2 When I first came, I had a release date of  
3 August the 15th. August the 15th passed, they say,  
4 "What is your release date?" Then they gave me another  
5 release date, October the 25th.

6 They say, "Well, that wasn't your release  
7 date." Now they gave me a release date, November the  
8 25th, because I wasn't in the transition, because I was  
9 on Level Three.

10 Q. Okay.

11 A. And now they dropped me to Level Two, because  
12 I'm petty, I had no write-ups, so I'm petty for prompts  
13 too much.

14 Q. What's prompts?

15 A. Yes.

16 Q. What's that?

17 A. That mean when they tell you to keep your  
18 hands behind your back and put the shiny pants on.

19 Q. Oh, you mean you had to be prompted too many  
20 times by the staff to do certain things?

21 A. Yes.

22 Q. Okay.

23 A. They dropped me below and they say, "Well,  
24 we're going to change your release date."

25 See, my release date was November the 25th.

1 Q. Do you feel that the staff is trying to help  
2 you get out and get ahead or do you feel that they are  
3 holding you back?

4 A. Holding me back.

5 Q. All right.

6 Is there anything else you want to say at  
7 this time?

8 A. I don't need to go back to that program,  
9 because when I first got -- when I got there, I used to  
10 have, you know what I'm saying, being cursed out for  
11 being, the staff putting their hands on, I didn't  
12 really appreciate that.

13 MS. OSBORNE: Okay, I don't have any further  
14 questions.

15 They may have some questions for you, so you  
16 have to answer theirs.

17 CROSS EXAMINATION

18 BY MS. MARVIN:

19 Q. Mr. M [REDACTED] do you feel that you should go any  
20 other program?

21 A. No, ma'am.

22 Q. Pahokee was your first commitment or your  
23 first program?

24 A. Yes.

25 Q. And you were committed for two separate

1 charges; correct?

2 A. Yes.

3 Q. And one of which was a strong-armed robbery,  
4 is that true?

5 A. Yes.

6 Q. And even while you were at the facility, you  
7 picked up an aggravate assault or an aggravate battery;  
8 right?

9 A. Yes. One wasn't really true.

10 Q. Have you settled that case? Is that case  
11 pending?

12 What happened to that case?

13 A. They sent somebody to the center, Mr. Miller,  
14 he's sent me ---

15 Q. Was it dropped, do you know anything about  
16 it?

17 A. No. I never heard since after that day. I  
18 never talked to the Judge.

19 Q. Now, you didn't talk to the Judge?

20 A. No, ma'am.

21 Q. Did the Judge give you an opportunity to  
22 talk?

23 A. No, because as soon as we walked in the  
24 courtroom, he said, "Where is the people from Pahokee  
25 CSC, sent him back.

1 Q. Who is the Judge?

2 A. Mr. Miller.

3 Q. I'm sorry, the Judge?

4 A. Mr. Miller. The Belle Glades, Mr. Miller.

5 Q. Judge Miller?

6 A. Yes.

7 MS. OSBORNE: I think he's probably --  
8 there's a case worker, Mr. Miller.

9 THE WITNESS: That's Belle Glades.

10 MR. ROSENTHAL: Belle Glades.

11 MS. MARVIN: Belle Glades. I'm sorry.

12 BY MS. MARVIN:

13 Q. At that time, did you tell anybody about the  
14 problems at Pahokee?

15 A. Yes.

16 Q. Who did you tell?

17 A. Miss Foushee.

18 Q. Foushee.

19 A. Her name is Foushee. She owned an apartment,  
20 a juvenile apartment in Palm Beach.

21 Q. Did you tell anybody else?

22 A. No, ma'am.

23 THE HEARING OFFICER: Keep your voice up  
24 because since you are now facing her, I can't hear  
25 you.

1 THE WITNESS: Yes.

2 BY MS. MARVIN:

3 Q. Now, I believe you said at the beginning that  
4 you thought that you were going to a program, do your  
5 time, and just get out; is that true?

6 A. Yes.

7 Q. You talked about your parents, that you  
8 haven't been able to see your parents.

9 Isn't it true that prior to going to Pahokee,  
10 you didn't even live with your parents?

11 A. No, ma'am.

12 Yeah, when I was scheduled to go there, I was  
13 standing with my parents -- grandparents.

14 Q. With your grandparents?

15 A. Yes.

16 Q. And you got -- and you lived with your  
17 grandparents because you got very little support from  
18 your parents; isn't that true? •

19 A. Yes.

20 Q. Schooling: I believe you said that you would  
21 like to have the opportunity to better your schooling.  
22 Yes?

23 A. Yes.

24 Q. Prior to going to Pahokee, where did you go  
25 to school?

1 A. When I was in Pahokee?

2 Q. Prior -- before you went to Pahokee, where  
3 did you go to school?

4 A. Jann Mann.

5 Q. And what is Jann Mann?

6 A. Alternative school.

7 MR. DAKAN: Can I just talk to one person,  
8 Your Honor, while she's examining?

9 THE HEARING OFFICER: No, sir.

10 BY MS. MARVIN:

11 Q. And how did you get -- an Alternative school  
12 is not like a regular school?

13 A. Yes.

14 Q. You had to do something at regular school to  
15 get removed and placed in an Alternative school?

16 A. Yes.

17 Q. And while you were at Alternative school,  
18 were you concerned then about your education?

19 A. Yes.

20 Q. But you were also suspended a couple of times  
21 at Jann Mann, too, weren't you?

22 A. Yes.

23 Q. Because of your disruptive behavior?

24 A. Yes.

25 Q. Who told you, you were going to a camp?



1           A.   Nobody exactly. See when I was -- when I was  
2           in the Detention Center, see, they said as soon as I  
3           walked in the courtroom, "We are going to send him back  
4           to Detention."

5                   And I thought I was going to get release and  
6           get home detention. See, I forgot my Public Defender,  
7           do you know what I'm saying, I forgot his name, but ---

8           Q.   You never discussed with your Public Defender  
9           where you were going?

10          A.   No, ma'am.

11          Q.   Did you know you were going ---

12          A.   My case worker told me though.

13          Q.   Okay.

14          A.   She told me if I keep messing up, I'm going  
15          to a program.

16          Q.   In effect, you -- you never asked your Public  
17          Defender any questions about, "What type of program am  
18          I going to"; or anything like that?

19          A.   No, ma'am.

20          Q.   In fact, do you even remember who your Public  
21          Defender was at that time?

22          A.   No, ma'am.

23          Q.   Now, when you first got to Pahokee, I think  
24          you said you got there January?

25          A.   Yes.

1 Q. When did you start having trouble?

2 A. See, when I first got there, I tell you the  
3 truth, I was being bucking.

4 Q. I'm sorry?

5 A. I was very wild for a little while.

6 Q. You were being wild for a little while?

7 A. Yes.

8 Q. What is being ---

9 A. Fighting and carrying on.

10 Q. Fighting and carrying on when you got there.

11 Did you think that was an appropriate

12 behavior at the program?

13 A. No, ma'am.

14 Q. You had said, I believe, at one point that  
15 the staff in the pods will just look at the T.V. or  
16 watch television?

17 A. Yes.

18 Q. Where's the T.V.?

19 A. T.V., they keep in the closet.

20 Q. They keep in a closet?

21 A. Yes.

22 Q. What closet?

23 A. It's like a closet, where they keep the  
24 clothes and stuff at.

25 Q. Do they take the T.V. out of the closet?

1 A. Yes.

2 Q. Where do they put it?

3 A. Put it right in the middle of the dorm.

4 Q. When do they do this?

5 A. Once in a while, on weekends.

6 Q. Now you would complain that the grievance  
7 procedure, that nobody ever does anything about it?

8 A. Yes.

9 Q. When did you start having trouble with the  
10 grievance procedure?

11 A. When I start having trouble with staff.

12 Q. When you started having trouble with staff?

13 A. Yes.

14 Q. Was this before or after you were fighting?

15 A. After.

16 See, I was wild back then, but, see, I was  
17 trying to maintain -- I'm trying to maintain.

18 Q. Maintain wild behavior?

19 A. No, do you know what I'm saying, I'm trying  
20 to do better.

21 I was trying to do better. See, back then,  
22 until when I came back from the Detention Center from  
23 Palm Beach, I have been trying to do better, but see, I  
24 had a reputation.

25 And the staff, they say, "Well, he's a

1 asshole, we are going to treat him as an asshole."

2 So at the same time, I was -- I was avoiding  
3 it.

4 Q. You were avoiding what?

5 A. What staff said to me and what they do.

6 Q. You said that you had gotten up a reputation?

7 A. Yes.

8 Q. And I guess this reputation was because of  
9 your own acknowledged wild behavior at the facility?

10 A. Yes, ma'am, when I first came.

11 Q. Okay. Now -- and you said this changed after  
12 you got back from the Detention Center in Belle Glades?

13 A. No, Palm Beach.

14 Q. I'm sorry, in Palm Beach?

15 A. Yes.

16 Q. And that was just in August; right?

17 A. Yes.

18 Q. So, September, October; part of November, you  
19 just recently changed your behavior?

20 A. Yes.

21 Q. And since changing your behavior, is that  
22 when you started this having problems with the  
23 grievance procedure?

24 A. Yes.

25 Q. And did you call your Public Defender?

1 A. No, ma'am.

2 Q. Did you write a letter to the Judge?

3 A. Yes.

4 Q. Which Judge?

5 A. Johnson, because he moved on, you know what  
6 I'm saying?

7 Q. Okay.

8 Did you write any other letters?

9 A. Yes, to Ms. Osborne.

10 Q. Okay. How did you know to write the letter  
11 to Ms. Osborne?

12 A. Because when she came in, she gave us  
13 envelopes and she say, "Well, if you're having  
14 problems, do you know what I'm saying, just write, you  
15 know." And she gave us a little card.

16 Q. Prior to her going to the facility, did you  
17 have any contact with her?

18 I mean, did you know her before?

19 A. Before that?

20 Q. Yeah.

21 A. No, ma'am.

22 Q. Now how many times have you spoken to Ms.  
23 Osborne?

24 A. Twice.

25 Q. And where was that?

- 1 A. No, once.
- 2 In the program.
- 3 Q. You spoke to her once at the program?
- 4 A. Yes.
- 5 Q. And you wrote her letters?
- 6 A. Yes.
- 7 Q. Have you ever spoken to Mr. Faber?
- 8 A. Yes.
- 9 Q. How many times have you spoken to Mr. Faber?
- 10 A. Twice.
- 11 Q. At the program?
- 12 A. Yes.
- 13 Q. And here?
- 14 A. Here, too.
- 15 Q. Have you ever talked to Mr. Rosenthal?
- 16 I'm sorry, the gentleman in the middle?
- 17 A. No.
- 18 Q. I guess that answers it.
- 19 A. No, ma'am.
- 20 Q. Okay. Did you speak to a Mr. DeMuro?
- 21 A. No, ma'am.
- 22 Q. You didn't speak to any expert or any witness
- 23 that Ms. Osborne or Mr. Faber brought to the facility?
- 24 A. No, ma'am.
- 25 Q. When you spoke to Ms. Osborne and Mr. Faber -

1 -- Strike that.

2 Did you speak to Judge Peterson when he was  
3 at the program?

4 A. Yes.

5 Q. When did Judge Peterson was at the program,  
6 did you speak to any of the other people that were with  
7 him at the program?

8 A. Yes.

9 Q. Did they tell -- isn't it true that Judge  
10 Peterson told you that he was going to get you out of  
11 the program?

12 A. Yes.

13 Q. Did the Public Defenders tell you they were  
14 going to get you out of the program?

15 A. Not here, but Peterson.

16 Q. Okay. You wanted to get out of the program,  
17 didn't you?

18 A. Yes.

19 Q. In fact, the program was not what you had  
20 expected, was it?

21 A. Yes.

22 Q. Just one moment.

23 Now, J [REDACTED], do you know what a performance  
24 summary is at Pahokee?

25 A. Yes.

1 Q. What is a performance summary?

2 A. That's something that they bring to the Judge  
3 like every, like every time I had a treatment.

4 Q. Okay.

5 And you had to sign the performance  
6 summaries; right?

7 A. Yes.

8 Q. And you read over it?

9 A. Yes.

10 Q. And so, from -- if in the performance  
11 summary, the people at Pahokee said that you were  
12 working very hard on Level Four, would they be  
13 telling the truth?

14 A. Yes.

15 Q. Did you go to a substance-abuse counseling  
16 program?

17 A. Yes, in the program.

18 Q. Now, in one of the performance summaries that  
19 you signed, it states that your grandmother says that  
20 she has seen a tremendous difference in the letters you  
21 had written since you have been there.

22 Your grandmother wouldn't lie; right?

23 A. Yes.

24 Q. And I mean, you have only been at the Pahokee  
25 program; right?



1 A. Yes.

2 Q. And so if there is this tremendous difference  
3 in your letters that you write, it would have to be  
4 based on the program; correct?

5 A. No, ma'am.

6 Q. Where do you think it came from?

7 A. Me. See, I proved my own self.

8 Q. I'm sorry?

9 A. I proved my own self, when I'm in my room --

10 Q. Uh-huh.

11 A. --I just practice on what I need help on.

12 Me and my roommate.

13 Q. And you have time to practice on your own  
14 self?

15 A. Yes, me and my roommate.

16 Q. What do you do?

17 A. See, my roommate helped me out on a couple of  
18 things, do you know what I'm saying?

19 I be writing a lot when I'm in my room. I  
20 just approve what I'm doing, like my handwriting.

21 Q. Okay.

22 So none of the staff have helped you out at  
23 all?

24 A. No.

25 Q. You done it all yourself?

1 A. Yes.

2 Q. Prior to going to Pahokee, why didn't you  
3 improve yourself?

4 A. Because the teachers weren't helping me, do  
5 you know what I'm saying?

6 Q. The teachers weren't helping you at Jann  
7 Mann, either?

8 A. At Jann Mann, yes.

9 Q. They were helping you there?

10 A. Yes.

11 Q. When you were there?

12 A. Yes.

13 Q. Do you know who Richard Hoffman is?

14 A. Who?

15 Q. Richard Hoffman, Mr. Hoffman?

16 A. No, ma'am.

17 Q. Do you know who Mr. Casas is?

18 A. No, ma'am.

19 Q. Do you know who Ms. Pelcyger is?

20 A. Pelcyger?

21 Q. Gwynne Pelcyger?

22 A. Yes.

23 Q. Who is she?

24 A. She is a white shirt, but I don't know what  
25 she is.

1 Q. Okay.

2 A. A superintendent or something.

3 Q. How do you know her?

4 A. Because when I used to go to medical, she  
5 used to come to me, do you know what I'm saying?

6 It be like, "Why are you fighting and this  
7 and that, why be doing things you do?"

8 Q. Okay. When she would ask you these  
9 questions, what was her tone?

10 A. It be like, "Why do you do the things that  
11 you do?"

12 Q. Would you talk to her?

13 A. That's all she was saying, she'd keep on  
14 walking.

15 Q. So, she wouldn't stop and talk to you?

16 A. No, ma'am.

17 Q. She would just come there, say that to you,  
18 and just walk away?

19 A. Yes.

20 And she would shake her head.

21 Q. You had said that the young man from Orlando,  
22 I'm sorry, what is his name, Rollins?

23 A. Yes.

24 Q. He's one of their favorites?

25 A. Yes.

1 Q. How long has he been in the program?

2 A. The same amount of time when I came.

3 Q. Okay, so he's been there the ten months, too?

4 A. Yes.

5 You see, they baby him a lot. See, he be  
6 whining about a lot of things, do you know what I'm  
7 saying, but they baby him about it.

8 Q. Do you know what the words "Club Med" means?

9 A. No, ma'am.

10 MS. MARVIN: Okay. I have nothing further.

11 THE HEARING OFFICER: You say you have been  
12 living with your grandparents, is it your  
13 grandmother or grandfather?

14 THE WITNESS: Yes.

15 THE HEARING OFFICER: Both?

16 THE WITNESS: No.

17 THE HEARING OFFICER: Have they visited you?

18 THE WITNESS: My grandmother.

19 THE HEARING OFFICER: How many times?

20 THE WITNESS: About three times.

21 THE HEARING OFFICER: Okay. And is -- has  
22 either of your parents visiting you?

23 THE WITNESS: Yes, my father.

24 THE HEARING OFFICER: Your father?

25 THE WITNESS: Yes.

1 THE HEARING OFFICER: Did he come with your  
2 grandmother or at different times?

3 THE WITNESS: He came with my grandma.

4 THE HEARING OFFICER: And how many times did  
5 he come?

6 THE WITNESS: One time.

7 THE HEARING OFFICER: And does your mother  
8 come?

9 THE WITNESS: No.

10 THE HEARING OFFICER: Redirect?

11 MS. OSBORNE: No.

12 THE HEARING OFFICER: I was just told by my  
13 Bailiff a little while ago that we do not have a  
14 courtroom problem this afternoon, so my suggestion  
15 is that we will recess now and start -- how long  
16 do we really need?

17 MR. DAKAN: I would think if we can get their  
18 cooperations, where both Theresa and I can be  
19 interviewing the same time, two o'clock would  
20 probably do it, if we can get somebody ---

21 We can do that. I can have argument ---

22 THE HEARING OFFICER: How about 1:30?

23 Let's figure out who we are interviewing,  
24 before we figure out how much time we need.

25 MR. DAKAN: Yeah, perhaps if they can tell

1 us who their actual witnesses are going to be, so  
2 we can figure out ---

3 MR. ROSENTHAL: Judge, if we can take this  
4 up with the Department's assistance. If you would  
5 give us five minutes; if we can't, then we would  
6 defer this.

7 We have a pack, which would be a composite  
8 defense exhibit of a net I believe fifty-eight  
9 photos and numbered in sequence from 1 to 60.

10 One, we're removing because the Department  
11 had objection, I have no problem with that.

12 (Thereupon, a discussion.)

13 MR. ROSENTHAL: There's one photo, which  
14 we will take up, but I'm not sure of the nature,  
15 the Department has agreed, I think undisputedly,  
16 to dispense with any need for custodian.

17 They had a relevancy objection in the sense  
18 of the Court's authority to conduct the inquiry,  
19 which I don't agree with the validity of the  
20 objection, but I recognize they are making that  
21 objection.

22 I don't know if they have an additional  
23 relevancy objection, but these are photographs,  
24 copies which have been given, and I would offer  
25 them into evidence as Defense Exhibit A,

1 composite.

2 At this point, a total of fifty-eight  
3 photographs, numbered 1 through 60.

4 Numbers 35 and 41 are excluded presently.  
5 Thirty-five, we would just dispense with in the  
6 interest in brevity and 41 I would proffer subject  
7 to what the Court wishes to do with it.

8 MR. DAKAN: Okay. Judge, let me just  
9 inquire from Mr. Rosenthal, it goes to the  
10 pictures that were taken on October 21st?

11 MR. ROSENTHAL: That's correct.

12 MR. DAKAN: No objections to them.

13 MR. ROSENTHAL: That will be Defense  
14 Exhibit A, composite, and then it's not a model of  
15 clarity, although the defense ---

16 (Thereupon, Defendant's Exhibit A  
17 was placed into evidence.)

18 THE HEARING OFFICER: I think we'll have to  
19 call up Exhibit 1 since ---

20 MR. ROSENTHAL: Okay, that's fine, Judge.

21 MR. DAKAN: Let me just clarify our  
22 objection. I'm sorry to interrupt, but some  
23 of those will take some explanation as to what  
24 they are and I assume they'll have testimony on  
25 that.

1                   You know, obviously, if there is a problem  
2                   with what ---

3                   THE HEARING OFFICER: I'll wait. I won't  
4                   look at them until I'm asked to.

5                   MR. DAKAN: I don't even have any problem  
6                   in looking at them right now, but, you know, I  
7                   don't like to add any problem and ask them,  
8                   "What's this?" But if nobody can identify  
9                   something, you know, a piece of steroid or  
10                  something, you know, at that time you want to look  
11                  at it, but otherwise, I have no problem.

12                  MR. ROSENTHAL: Well, Judge, the Department  
13                  agreed that it would not be necessary to call a  
14                  custodian or the picture-taker.

15                  So I don't understand the last statement.

16                  If the Department is requesting that we  
17                  impose upon the Court's time and then take a  
18                  witness and go through, "Do you recognize each  
19                  view", I thought that was the purpose of  
20                  dispensing with the photo-taker.

21                  MR. DAKAN: No, no, no, Judge.

22                  It just seemed to me and I may be wrong  
23                  about this, but there are some thing that the  
24                  Court may want to know where is this.

25                  MR. ROSENTHAL: Well, we would try to



1 clarify it. But these are all of the facility  
2 and the Department is agreeing that these  
3 photographs ---

4 THE HEARING OFFICER: This will give me  
5 a guided tour of the pictures.

6 MR. ROSENTHAL: That's fine, Judge.

7 MR. DAKAN: Yeah, I see ---

8 THE HEARING OFFICER: Now what about the  
9 witnesses?

10 MR. ROSENTHAL: There is just one photograph  
11 we would offer into evidence and the Department  
12 will be objecting. I think they are objecting  
13 less on the relative of clarity of the photograph  
14 than on what it depicts.

15 These were -- these were --

16 THE HEARING OFFICER: Point it the other way.

17 MR. ROSENTHAL: Oh, I'm sorry, Judge. It's  
18 a bench -- you have to look at it to rule on a  
19 disability. You have to look at the ---

20 THE HEARING OFFICER: I know, but if I can  
21 deal with it without -- my practice is if I can  
22 deal with it without looking at it, I'll do that.

23 If I do not want to deal with, then I will  
24 look at it.

25 MR. ROSENTHAL: Okay, Judge. I respect that.

1 Okay.

2 MR. DAKAN: Judge, I don't think you can deal  
3 without looking at it. I certainly have no  
4 problem if you take a look at it.

5 All our objections is we don't what it is.  
6 We don't know who it is, we don't know -- we do  
7 understand, though, and I assume from the  
8 testimony, that this was taken in the confinement  
9 area; but why they -- what the circumstances were,  
10 we saw only that.

11 Now, I would ask, I mean if they want to put  
12 somebody on it who does know that and lay that  
13 predicate, I don't have any problem with.

14 THE HEARING OFFICER: If they want to object  
15 to this photograph, they have a right to object  
16 to it.

17 You didn't say, you know, the relevance. Is  
18 this somebody, you know, that you just came on or  
19 is this somebody who decided to show you what he  
20 was doing or you know?

21 MR. ROSENTHAL: I would proffer to the Court  
22 and --

23 THE HEARING OFFICER: I assume it is somebody  
24 at the facility?

25 MR. ROSENTHAL: Yes.

1           --I would proffer to the Court and our  
2 investigator would substantiate this, if we need  
3 to call him, we are perfectly willing to do that,  
4 and we'll do that to meet the objection, if that  
5 is the nature of the objection.

6           We sent the investigator up there not to  
7 take any skewed view of the facility, just take a  
8 range of views of the facility and, you know,  
9 you'll see an X-number of shots of books, which we  
10 didn't call out. We simply put them in.

11           And shots of the exterior and shots of the  
12 interior, whichever parts he happened upon.

13           There was no instruction to him, you know,  
14 to load the dice. That was just one photograph  
15 that he took.

16           We can identify the room, will he know who  
17 that child is, I doubt it, because the child's  
18 identity is not shown in the photograph.

19           THE HEARING OFFICER: Do you want to have  
20 somebody identify whether or not this is staged or  
21 have a corporate witness; if you want to stipulate  
22 that it is not staged, then why not just put it  
23 in?

24           MR. DAKAN: Well, I don't have a real problem  
25 with that, Judge.

1 My only question is, you know everything that  
2 goes in, has to be relevant, which is to say it  
3 has to prove or disprove something.

4 And I just don't see that that particular  
5 Photograph A assists the Court at all in doing it  
6 or it proves or disproves ---

7 THE HEARING OFFICER: I don't know. I always  
8 learned the relevances can just be a little bit  
9 and what that seems to be showing is somebody  
10 unhappy at a particular moment.

11 MR. DAKAN: Uh-huh. Okay.

12 MR. ROSENTHAL: It is -- I would say, Judge,  
13 it is the confinement room.

14 MR. DAKAN: We understand that -- okay,  
15 Judge, we would just note our objection ---

16 THE HEARING OFFICER: It seems to be somebody  
17 who is sitting on the floor with that water on  
18 him.

19 MR. ROSENTHAL: That's true.

20 MR. DAKAN: Okay. 1:30 then, Judge. I guess  
21 we can figure out where we can do this.

22 THE HEARING OFFICER: We're going off the  
23 record.

24 (Thereupon, a luncheon recess was taken  
25 at 11:40 a.m.)

AFTERNOON SESSION

(1:18 p.m.)

MR. ROSENTHAL: Okay, I'll just restate:

We have an agreement that the documents the Department provided, which we would be subsequently supplying to the Court as Juvenile's Exhibits 1 through 10, will be accepted into evidence without a custodian or other authentication and the Department is reserving the right, if I am stating this accurately, to object to the relevancy in terms of the authority of the Court to conduct the hearing.

I don't think there is an objection beyond that and the Department can so state.

MR. DAKAN: That's correct.

MR. ROSENTHAL: I'm sorry, I was just going to say for a logistic purpose, I don't know if this needs to be on the record, but I will clarify: We're having a copy bound on the side, for each of you for use in Court and for the Court's benefit.

And we also submit to the Court, with the Department's and the Court's consent, if that is the case, a copy, which is just rubber-banded, so that ultimately when the Clerk would have to bind

1           this for subsequent proceedings in a higher court,  
2           that the Clerk would have a greater facility of  
3           doing that.

4                     That is to say that they don't have to unbind  
5           it on the side and have a messy copy. They would  
6           have a copy that they could just tab at the top.

7                     THE HEARING OFFICER: Good.

8                     MS. MARVIN: Judge, there was one thing  
9           that I needed to clarify.

10                    At the beginning of the hearing, Mr.  
11           Dakan had made a motion to dismiss because we were  
12           objecting that this is an improper motion to  
13           modify and in fact it's more than an 1983 case,  
14           or a conditions of confinement case, I just want  
15           the record to be clear that we had made that  
16           objection.

17                    I don't know if we had used the magic word,  
18           "standing the objection", but that is why I didn't  
19           interrupt Mr. Major's testimony and interpose this  
20           standing objections that we believe ---

21                    THE HEARING OFFICER: Why don't you just  
22           take a standing objection. I think it is pretty  
23           clear on the record over the last few weeks that  
24           you have an objection.

25                    MS. MARVIN: Thank you.

1 MR. DAKAN: Judge, I just want the record  
2 to reflect that I am providing the Public  
3 Defenders with a copy of the telephone deposition  
4 of Paul DeMuro, which was taken and that is the  
5 final copy.

6 THE HEARING OFFICER: All right. Let's  
7 call your next witness.

8 MS. OSBORNE: Judge, we're going to call  
9 D [REDACTED] D [REDACTED].

10 THE HEARING OFFICER: D [REDACTED], raise  
11 your right hand.

12 Do you swear or affirm that your testimony  
13 will be the truth?

14 THE WITNESS: Yes, sir.

15 THE HEARING OFFICER: Have a seat. Keep  
16 your voice up.

17 Thereupon:

18 D [REDACTED] D [REDACTED]  
19 was called as a witness and, after having been first  
20 duly sworn, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. OSBORNE:

23 Q. Tell the Judge what your name is, please.

24 A. Demetrius Dyer.

25 Q. You have to talk much louder than that,

1

D [REDACTED].

2

A. D [REDACTED] D [REDACTED].

3

Q. And how old are you?

4

THE HEARING OFFICER: How do you spell  
your last name?

5

THE WITNESS: D- [REDACTED].

6

BY MS. OSBORNE:

7

Q. Okay, how old are you?

8

A. Fourteen.

9

Q. And where are you currently, right now, where  
are you living?

10

A. In Miami.

11

Q. Okay. Well, in Miami; but where have you  
been for the last ten months?

12

A. In Pahokee, the Behavior Center.

13

Q. And when did you arrive there?

14

A. January 30th.

15

Q. How old were you when you arrived there?

16

A. Thirteen.

17

Q. And how did you get there, what was your  
crime?

18

A. Violation of community control.

19

Q. And how did you violate your community  
control?

20

A. I left the program.



1 Q. What was the name of the program?

2 A. Here's Help.

3 Q. Why were you in Here's Help?

4 A. Drugs.

5 Q. Okay. What was your addiction problem?

6 What was your drug?

7 A. Marijuana.

8 Q. And what else?

9 A. Alcohol.

10 Q. Okay.

11 Who do you normally live with?

12 A. My mom and my dad.

13 Q. Okay. And what had you done to get you into

14 Here's Help?

15 What was your crime for Here's Help?

16 A. Breaking and entering.

17 Q. Whose house?

18 A. I don't know the person.

19 Q. And when did you turn fourteen?

20 A. July 20th.

21 Q. Of this past year?

22 A. Yes.

23 Q. Okay. When you got to Pahokee, were you

24 giving an orientation?

25 A. Yes.

1 Q. Okay. Tell the Judge about the orientation.  
2 Tell him what happened when you first arrived there.

3 A. When I first arrived there, they just gave me  
4 a pamphlet, a book, and told me to read it and they  
5 pulled me out of the classroom and asked to write the  
6 rules of the program.

7 Q. What were the rules of the program that you  
8 remember that they explained?

9 A. They didn't explain, they just asked if we  
10 had any questions.

11 Q. They gave you a pamphlet; right?

12 A. Yes.

13 Q. Did they read them to you or did you read the  
14 rules?

15 A. We read them.

16 Q. Okay. And then they asked you if had any  
17 questions?

18 You have to answer out loud, because there's  
19 a tape-recorder, so you have to answer out loud all the  
20 time.

21 A. Yes.

22 Q. Do you -- are those the same rules that are  
23 actually followed in Pahokee?

24 A. Not really.

25 Q. Okay. What's the difference between the

1 rules that are written and the rules as they are  
2 applied?

3 A. The staff don't follow most of them.

4 Q. Okay. Can you give us examples or can you  
5 tell the Judge how that happens?

6 A. Some of them say we can talk in the  
7 cafeteria, the staff don't let us talk in the  
8 cafeteria.

9 Q. What happens if you do talk in the cafeteria?

10 A. They'll dump our trays.

11 Q. They'll dump your trays of food?

12 A. Yes.

13 Q. And, okay, tell us some other things that are  
14 written down in the rules, but aren't in fact followed?

15 A. Like, there's a certain, when you get, when  
16 you do something wrong and get sent to confinement,  
17 they make you stand a lot longer than you're supposed  
18 to.

19 Q. Okay. What do the rules say -- why should  
20 you be sent to confinement. In the rules, what are the  
21 kinds of things that would get you confinement?

22 A. Attempt to escape, inciting a riot, fighting.

23 Q. Okay.

24 Is anyone ever sent to confinement for things  
25 that aren't that serious, for more petty things?

1 A. I have.

2 Q. Okay. You were sent to confinement for  
3 something that wasn't an attempted escape or wasn't  
4 inciting a riot or wasn't -- what's the last one?  
5 Fighting?

6 A. Yes.

7 Q. Okay. What was your reason you were sent to  
8 confinement?

9 A. I cursed at a staff.

10 Q. Okay. So for cussing, you got sent to  
11 confinement?

12 A. Yes.

13 Q. Does the staff cuss?

14 A. Yes.

15 Q. How often?

16 A. When we don't do what they say, they'll curse  
17 at us.

18 Q. Okay.

19 A. Curse at me.

20 Q. Curse at you?

21 A. Yes.

22 Q. How long did you get sent to confinement for  
23 the cussing?

24 A. Three days.

25 Q. And tell the Judge what happens when you are

1 in confinement, what's confinement like?

2 A. They send you, they put you in a room by  
3 yourself. You don't have no water on. Sometime, they  
4 put you in there with just your shorts on, your  
5 underwear.

6 Q. What's the climate like in there, what's the  
7 temperature?

8 A. Cold.

9 Q. When you were put in confinement for, what  
10 was it, three days, four days?

11 A. Three days.

12 Q. Three days for cussing, were you in your  
13 shorts?

14 A. Most of the time.

15 Q. Do you have blankets?

16 A. Yes.

17 Q. You have blankets, during the day too?

18 A. No. You don't have nothing in the day time,  
19 only just shorts.

20 Q. Okay. And what do you do all day, while you  
21 are in confinement for three days?

22 A. Nothing. Think.

23 Q. What do you think about?

24 A. Getting out.

25 Q. Of confinement, of Pahokee, or what?

1 A. Both.

2 Q. Yeah.

3 A. Both, both.

4 Q. Now have you ever been on a suicide watch?

5 A. Yes.

6 Q. Okay. For how long?

7 A. Once for three days; once for four days; one  
8 day; half a day.

9 Q. All right.

10 And what prompted that suicide watch, what  
11 had you done that got you that?

12 A. Scratched my arm up.

13 Q. Okay. Show the Judge your left and your  
14 right arms. For the record, well, the Court can  
15 actually see what the record looks like.

16 Why don't you stand up, D [REDACTED]?

17 THE HEARING OFFICER: All right. For the  
18 record now, both sides of his left arm and on one  
19 side of the right arm --

20 THE WITNESS: Yes, sir.

21 THE HEARING OFFICER: --are multiple scars  
22 from something.

23 MS. MARVIN: I would object as to -- I don't  
24 know if Ms. Osborne is going to lay the predicate,  
25 but at this time, I don't know which of those

1           scars were made before or after, you know, his  
2           going into Pahokee.

3           MS. OSBORNE: I'll ask.

4           THE HEARING OFFICER: But you have to admit  
5           that those look like scars, that's not something.

6           MS. MARVIN: I'll admit that they look like  
7           scars.

8           BY MS. OSBORNE:

9           Q.     D [REDACTED], when did you first do a slashing?

10           Is that before or after Pahokee?

11           A.     The first time -- before, no, after.

12           Q.     Okay.

13           A.     When I was in confinement.

14           Q.     So the first time you slashed your arm was  
15           the first time that you were in confinement?

16           A.     Yes.

17           Q.     Okay.

18           And why did you do that?

19           A.     Because my room, I wanted to get something,  
20           because it was cold and all I had was my shorts.

21           Q.     And so you did it in part to get attention or  
22           to let them -- to make them get you ---

23           A.     Both, to get attention and get out of my  
24           room.

25           Q.     Okay. What about the other slashings, you

1 have about fifteen of them?

2 A. Why I did them?

3 Q. Why you did them and when you did them.

4 A. Mostly, I can't remember the exact days I did  
5 them, but I don't know, I did most of them like every  
6 day. One a day; two a day.

7 Q. Uh-huh.

8 What were you thinking when you were slashing  
9 them?

10 A. Some attention and try to get out of Pahokee,  
11 try to get them to send me somewhere else, out of  
12 there.

13 Q. Uh-huh. Why do you want to get out of  
14 Pahokee so bad that you would slash yourself?

15 A. I don't feel it's the right program to be in.

16 Q. Okay. Well, tell the Judge about this  
17 program and why it's not right.

18 A. I suppose, they told me I was supposed to go  
19 to a drug rehab and then I only got counseling for  
20 three weeks and two times a week.

21 All we did was sit in a group and they talked  
22 to us, but I wasn't sitting most of the time in the  
23 groups. And you don't get no home visits. I better to  
24 speak to my mom about once every two months or when she  
25 come visit me.



1 It is a bad program for me.

2 Q. What grade were you in before you went to  
3 Pahokee?

4 A. Eighth.

5 Q. What grade are you in now?

6 A. They sent me to ninth.

7 Q. They do? Do you feel like you have  
8 progressed academically since you have been there?

9 Do you feel like you have improved?

10 A. No.

11 Q. No? You have to answer out loud.

12 A. No, ma'am.

13 Q. Tell us what school is like.

14 A. We just, they put us on, everybody work on  
15 the same grade level.

16 Q. Regardless of what your needs are?

17 A. That's what, in my group, that's what they  
18 did. Everybody work on the same grade level.

19 Q. So, does that mean that sometimes you had  
20 sixth graders and eighth graders and tenth graders, but  
21 they are all on the same grade level?

22 A. Yes. That's what they told us.

23 Q. Okay. What about if you have a learning  
24 disability or if you are emotionally handicapped or one  
25 of those kinds of labels, special labels, are you still

1 on the same levels as everyone else?

2 MS. MARVIN: Judge, I'm going to object as  
3 to -- I don't even know if he knows what a special  
4 level is or if he knows what the other kids'  
5 levels are.

6 THE HEARING OFFICER: I think you can better  
7 present with somebody who has knowledge of that.

8 Sustained.

9 MS. OSBORNE: Okay.

10 BY MS. OSBORNE:

11 Q. Were you ever in the confinement area for a  
12 long time, like about fifteen or twenty days?

13 A. Yes.

14 Q. For what reason?

15 A. I pressed the panel-control button.

16 Q. Why did you press the panel-control button?

17 A. To get out of the dorm.

18 Q. Okay.

19 And why did you want to get out of your dorm?

20 A. Because a lighter got missing and I told --  
21 the facility administrator was going to punish me for  
22 it and I told her where her where it was.

23 Q. Okay.

24 A. Somehow, the kid knew where I had got it and  
25 they -- I think they wanted to jump me.

1 Q. Who is the facility supervisor or  
2 administrator that you told about the -- is it a  
3 cigarette lighter?

4 A. Yes.

5 Q. --who is the facility, was it administrator?

6 A. Yes. Ms. Cheves.

7 Q. Ms. Cheves, you told Ms. Cheves that you knew  
8 where the cigarette ---

9 MS. MARVIN: Objection to leading.

10 MS. OSBORNE: Okay.

11 BY MS. OSBORNE:

12 Q. What did you tell Ms. Cheves?

13 A. I told Ms. Cheves that I know where a  
14 cigarette lighter is and that if I tell her, I won't  
15 get in trouble for it, and will she help me get out of  
16 the dorm.

17 Q. Why did you want to get out of the dorm,  
18 first of all?

19 A. Because it's bad. You get cursed every day,  
20 you locked down most of the time.

21 Q. How long could you be locked down for?

22 A. At the school?

23 Q. Yes.

24 A. Like from 3:30 all the way to 5:00 o'clock,  
25 that's lunch time, dinner time.

1 Now for dinner, we go back to our room for a  
2 shower.

3 Q. All right. But are you locked down for just  
4 one evening?

5 A. Most of the time, mostly every day.

6 Q. Mostly every day?

7 What unit were you in or what was the name of  
8 that whatever it is called, or unit?

9 A. D-2.

10 Q. D-2. Who was the person in charge of D-2?

11 A. Mr. Cook.

12 Q. Okay. Who is Mr. Lewis, was there a Mr.  
13 Lewis?

14 A. No, not in D-2.

15 Q. Okay. So you went to Ms. Cheves, go ahead,  
16 and you told her where the cigarette lighter was?

17 A. Yes.

18 Q. Then what happened?

19 And you asked her to get out of your dorm?

20 A. Yes. She told I would get about Friday.

21 Q. Okay. Is Ms. Cheves -- all right, go ahead.

22 A. She told me I would get about Friday and then  
23 I think it was that Saturday, and I still didn't hear  
24 from her.

25 Q. Uh-huh.

1           A.    And then I say, "I got to find a way to get  
2 out by myself" and that is when I pressed the panel-  
3 control button.

4           Q.    Did you feel safe in that dorm?

5           A.    No.

6           Q.    What was the reason for asking Ms. Cheves to  
7 get out of that dorm?

8           A.    Because, as I say, it's just bad. I don't  
9 like the dorm, first of all.

10          Q.    Uh-huh.

11          A.    I'm tired of being locked down.

12          Q.    Uh-huh.

13          A.    And then I told the staff several times and I  
14 told Ms. Cheves where the lighter was, and could they  
15 help me get out of the dorm and they told me there  
16 ain't nothin they could do.

17          Q.    So, you thought maybe by cooperating, that  
18 you could get out of it?

19          A.    Yes.

20                MS. MARVIN: Objection as to leading.

21                THE HEARING OFFICER: Sustained.

22                MS. OSBORNE: Okay.

23                MS. MARVIN: Move to strike.

24                THE HEARING OFFICER: Granted.

25                BY MS. OSBORNE:

1 Q. When you told Ms. Cheves where the lighter  
2 was, what were you trying to do, what was your purpose?

3 A. To get out of the dorm, to try to with her,  
4 to help me get out of the dorm.

5 Q. Uh-huh.

6 Does that happen in Pahokee, are there  
7 bargains made between the staff and the kids like that?

8 MS. MARVIN: Judge, I would ask that he  
9 just testify as to, you know, his personal  
10 knowledge or involvement with bargaining with the  
11 staff.

12 THE HEARING OFFICER: Well, he saw  
13 bargaining.

14 I mean not that some of the kids told  
15 him that he bargained.

16 I don't want to hear about some kid telling  
17 him that he bargained.

18 MS. OSBORNE: All right, of course.

19 No, no, they have been well-instructed to  
20 only say what they have actually seen or felt.

21 THE HEARING OFFICER: All right.

22 BY MS. OSBORNE:

23 Q. After the panic button was pressed, where did  
24 you go; what happened to you?

25 A. I was sent to confinement.

1 Q. For how long?

2 A. Twenty-nine days.

3 Q. Twenty-nine days, okay.

4 During this twenty-nine days, did you have  
5 any education?

6 A. No.

7 Q. Did you have any books in confinement?

8 A. No.

9 Q. Did you have a mattress or a place to sit  
10 down in confinement?

11 A. Yeah, I had a mat, they gave me a mat.

12 Q. They gave you a mat. Were you allowed to  
13 keep that mat during the day?

14 A. Yes.

15 Q. You were, okay.

16 At any time, were you shackled?

17 A. No, I don't think so.

18 Q. Were you in a position to see other  
19 confinement rooms during that twenty-nine days?

20 A. Yes.

21 Q. Did you ever see anyone else shackled?

22 A. Yes.

23 Q. Okay. Can you describe that?

24 A. I seen one person got handcuffed behind their  
25 back to the bed, they make you sit on the bed and

1       they'll handcuff you; or if they can't make you sit on  
2       the bed, when they restrain you on the floor, they'll  
3       handcuff you to the bed.

4           Q.    Okay. Did you ever see water thrown into any  
5       confinement rooms?

6           A.    Yes.

7           Q.    Describe that.

8           A.    I came out my room one day and I walked down  
9       and I seen a staff walk into an utility room and get a  
10      bucket and filled it halfway with water and just walk  
11      into somebody's room and opened the door and threw the  
12      water in there.

13          Q.    What was that person doing that the staff  
14      threw water in?

15          A.    I don't know. I just woke up. I just seen  
16      him throw the water in the room.

17          Q.    Okay. Was there a child in the room, though?

18          A.    Yes.

19          Q.    Okay.

20                Now is the water thrown at the child or just  
21      in the room in general, or do you know?

22          A.    He just opened the door and just threw the  
23      water in. I didn't see if he got the person or not --

24          Q.    Okay.

25          A.    --but he just threw the water in.



1 Q. Do you know why water is thrown into the  
2 rooms?

3 A. To make them calm down, stop kicking on the  
4 door, or whatever.

5 Q. Uh-huh. Now, when you are in confinement,  
6 does anyone come and visit you, to counsel you or talk  
7 to you?

8 A. No.

9 Q. Okay. Did you see like any religious people  
10 or psychological people or any people like that, that  
11 come in and talk to you about behavior or why you are  
12 there?

13 A. No.

14 Q. Did you get to read any books; do you get  
15 access any Bibles, anything like that?

16 A. No.

17 Q. Do you receive letters, do you get to receive  
18 letters from your family?

19 A. While in confinement?

20 Q. Yes.

21 A. No.

22 Q. Do you get any exercise?

23 A. No. You're supposed to get a one-hour rec,  
24 one-hour thing of rec, but they don't give it to you.

25 If they don't like you, they don't give it to

1       you.

2               Q.   Did you get it, when you were there for  
3       twenty-nine days?

4               A.   No, they just let me stay at my room.  I  
5       didn't have to be locked inside the room.

6               Q.   You didn't have to be locked inside your room  
7       most of the time?

8               A.   No, most of the time.  When certain staff  
9       come, and I'm not straight with him, I'm not right with  
10      him, they would lock me in the room.

11              Q.   Okay.  Well, what is "straight" with him;  
12      what's "all right" with them mean?

13              A.   Say if I ever did something to him or did  
14      something they don't like, they'll put me in a room.

15              Q.   So, did the rules change, depending on the  
16      staff and who is in charge?

17              A.   Yes.

18                      That's one of the reasons why I want to get  
19      out of D-2.

20              Q.   Why?

21              A.   Because certain staff like certain kids and  
22      them the kids that be out most of the time, because  
23      they like them.

24              Q.   But if they don't like you, what happens to  
25      you?

1 A. You stay in your room.

2 Q. They keep you guys -- they keep the guys they  
3 don't like locked down?

4 A. Yes.

5 Q. Who is Mr. Woods?

6 A. The staff that work in D-1.

7 Q. Okay. Were you ever in D-1?

8 A. Yes.

9 Q. Okay, so Mr. Woods was one of your staff  
10 people; right?

11 A. Yes.

12 Q. Did Mr. Woods know about your suicide watch  
13 or suicide attempts?

14 A. He was the guy that was supposed to be  
15 watching me.

16 Q. Okay. And what are the kind of things that  
17 Mr. Woods would say to you or help you with?

18 A. When I was on the basketball court, it was  
19 me, it was me, him, and two other kids, and he said,  
20 "D [REDACTED] want to kill hisself, D [REDACTED] just planned,  
21 D [REDACTED] wanted to kill hisself."

22 And he said, "I'll show you."

23 And he picked up a piece of wood, that's from  
24 up under the table, and he gave it to me, and he said,  
25 "If you want to kill yourself, you got a vein in your

1 neck, cut the vein."

2 Q. What about Mr. Young, did he ever do anything  
3 or give you any advice?

4 A. When I came from, I think, yeah, when I came  
5 from confinement, they put me on a suicide watch again.

6 Then Mr. Young yelled out, "D [REDACTED], D-2 Baby"  
7 and mostly everybody came and they said, "If I want to  
8 kill myself, they'll help me."

9 Q. What do you mean "everyone"?

10 A. Not everybody, but mostly everybody.

11 Q. You mean the people on your dorm or pod?

12 A. Yes.

13 Q. You mean kids and staff?

14 A. The class that was inside their room, they  
15 came to see if I was going to kill myself or not.

16 Q. So the kids are like chanting or talking?

17 A. Yeah.

18 Q. And this is being led by Mr. Young?

19 A. Yes.

20 Q. Okay.

21 Now what was Mr. Young's position during the  
22 time he was saying "that D [REDACTED] is D-2's baby", what was  
23 his position?

24 A. What do you mean?

25 Q. What's his role? Is he a treatment person,

1 is he ---

2 A. Oh, a youth-care worker.

3 Q. He's a youth-care worker.

4 Did you feel cared for by Mr. Young?

5 A. No. I don't feel cared for by nobody in  
6 there.

7 Q. Do you feel safe there, personally safe, your  
8 body?

9 A. No.

10 Q. Have you seen or had physical abuse on  
11 yourself?

12 MR. MARVIN: Judge, just for the record, to  
13 be clear that our objection was for how they feel,  
14 if they feel safe and about the abuse.

15 I mean to be objecting on relevance grounds.

16 THE HEARING OFFICER: Oh.

17 MS. OSBORNE: I have a statute. The statute  
18 quoted by Mr. Dakan in opening statement as to the  
19 purpose and the overall purpose of the chapter  
20 that he cited, lists this as the number one thing,  
21 which actually he did not bring out.

22 THE HEARING OFFICER: Well the safety ---

23 MS. OSBORNE: Which says: "The Department  
24 is to foster a nurturing environment, in which  
25 children feel safe, respected, dignity,

1 integrity"; things like that.

2 So I think it is sort of germane to what  
3 the purpose of Juvenile Justice is supposed to be  
4 about.

5 MR. DAKAN: We're not here for the purpose  
6 of Juvenile Justice. We're here --

7 THE HEARING OFFICER: Oh, yes, we are.

8 MR. DAKAN: --we're here to determine if  
9 this is not-at-risk facility.

10 THE HEARING OFFICER: If -- that's the  
11 question which I haven't quite answered yet and  
12 I'll answer it before, you know, probably before  
13 the end of the next couple of days, as to whether,  
14 but I think I kind of hinted at what I thought the  
15 answer was at the last hearing:

16 That if a place is a -- if it doesn't reach  
17 any level, including Level 10, it certainly can't  
18 be a Level 6.

19 BY MS. OSBORNE:

20 Q. Did you feel safe there?

21 A. No.

22 Q. Did you ever witness any physical abuse,  
23 staff on kids?

24 A. Yes.

25 Q. Okay. What did you witness and describe it

1 to the Judge?

2 A. There was one incident that happened when,  
3 sometime happened about some pictures or somebody had  
4 somebody had some pictures on their wall.

5 Q. Is this somebody J [REDACTED] M [REDACTED]?

6 A. Yes.

7 Q. Okay, J [REDACTED] M [REDACTED] had some pictures on his  
8 wall.

9 Tell the Judge what you witnessed.

10 A. I didn't see what started it, but I seen Mr.  
11 Cook trying to snatch the papers out of M [REDACTED]'s hand.

12 And after a while, M [REDACTED] gave them to him and  
13 then I went outside and kept shooting basketballs.

14 When I came back in, I seen Mr. Cook trying  
15 to like restrain M [REDACTED], but he couldn't, so then he  
16 just grabbed him and throw him on the floor and then  
17 Mr. Cook landed on his knee, something happened to his  
18 knee.

19 And then M [REDACTED] went into confinement and  
20 after that, they told me it went to the Detention  
21 Center.

22 Q. This Mr. Bedford --

23 A. Mr. Beck.

24 Q. --is there a Mr. Bedford?

25 A. Yes.

1 Q. What is his position at Pahokee?

2 A. Youth care worker.

3 Q. Did you feel cared for by Mr. Bedford?

4 A. No.

5 Q. Did Mr. Bedford have any advice to you?

6 A. Yes.

7 Q. About your suicide attempts?

8 A. Yes.

9 Q. What advice did Mr. Bedford give you?

10 A. He told me, "If I want to kill myself, jump  
11 off the second floor."

12 Q. Okay. Who is Mr. Legon?

13 A. Mr. Legon.

14 Q. Who is he?

15 A. A youth-care worker.

16 Q. Did you feel cared for by Mr. Legon?

17 A. No.

18 Q. Tell me about Mr. Legon, what's his position  
19 and tell me about your interaction with him.

20 A. He told me the same thing, jump off the  
21 second floor.

22 Q. What kind of tone or what kind of tone would  
23 they use in their language; is this a joking thing?

24 A. No. They said it in front of a group of  
25 people, so I don't think it was a joke.



1 Q. And would be the tone or what would be the  
2 type of words that they would say to you?

3 A. They say, "D [REDACTED] crazy, D [REDACTED] want to kill  
4 hisself."

5 "If you want to, all you got to do is jump  
6 out of the second floor" --

7 Q. Uh-huh.

8 A. "--or when I go to sleep at night, get up  
9 under the sheets and tie a sheet around my neck."

10 Q. Okay.

11 In addition to giving you suggestions, did  
12 they ever try to help you or build you up?

13 A. No.

14 Q. These staff care workers, these youth-care  
15 workers?

16 A. No.

17 Q. No. Did you trust anybody in Pahokee that  
18 you could go to, to confide in? •

19 A. One person really.

20 Q. Who was that?

21 A. Somebody by the name of Ms. Robinson.

22 Q. Where was she, what was her position and  
23 where did she work?

24 A. She was a youth-care worker.

25 Q. And where did she work?

1 A. She worked in D-2 and in confinement.

2 Q. Did you have some contact with her over the  
3 months?

4 A. Yes.

5 Q. Okay. And she was one person that you  
6 trusted?

7 A. Uh-huh.

8 Q. Did you ever try to tell someone like her --  
9 what's her name, Ms. Robinson?

10 A. Yes.

11 Q. --did you ever try to tell someone like her  
12 what was going on with you and the other youth-care  
13 workers?

14 A. Yes.

15 Q. And did you know that there is a grievance  
16 process at Pahokee?

17 A. The grievances don't work. You fill them  
18 out, you don't know what happened to them after that,  
19 after you fill them out.

20 Q. Does anybody come by and try to get a  
21 statement from you or ask you what happened or your  
22 side of the story?

23 A. No.

24 Q. Do you have any faith that if you were  
25 complain or lodge a grievance against an abusive

1 worker, or any worker for any reason, that it would get  
2 anywhere?

3 A. No. The way I did it, when I had a problem,  
4 I knew grievances don't work, I probably cut my arm to  
5 speak to the facility administrator, if I had a problem  
6 and explain it with her.

7 Q. Are you saying that part of the reason you'd  
8 slash your arms is to get to a higher person?

9 A. Yes.

10 Q. When you got to the higher person, and would  
11 tell them what happened, would you get any action, did  
12 anything happen?

13 A. No.

14 Q. How did that make you feel, that you had  
15 nobody that you could tell?

16 A. If you got a problem, you're just stuck.

17 Q. You're just stuck?

18 A. Yes.

19 Q. How do you feel in Pahokee in general?

20 A. Just don't like it, I hate it.

21 Q. Huh?

22 A. Just hate it, I don't like it.

23 Q. How does it feel to you? What kind of a  
24 place does it feel like to you?

25 A. Like a prison.

1 Q. What level are you on right now?

2 A. One.

3 Q. So, you have been there since the end of  
4 January?

5 A. Yes.

6 Q. And you are still on Level 1?

7 A. Yes.

8 Q. How come you haven't been able to progress to  
9 Levels 2, or 3, or 4?

10 A. I went to Level 2, but I got dropped back  
11 down.

12 Q. Uh-huh. For what reasons?

13 A. Talking back to staff or get write-ups by not  
14 going to my room.

15 Q. Uh-huh.

16 Would you say that you were a difficult  
17 person?

18 A. Huh?

19 Q. Are you a difficult person at Pahokee?

20 Are you a person who is not obeying?

21 A. Yeah.

22 Q. And why is that?

23 A. It's -- the rules are hard.

24 Q. What's hard about the rules?

25 A. Still they tell you to do and you don't do

1 it, you get wrote up with someone, and you get a  
2 certain amount of extra days added to your time.

3 Q. Uh-huh. So your sentence gets elongated as -  
4 - I mean your sentence gets added onto for punishment,  
5 for discipline reasons?

6 A. Yes.

7 Q. And that's why you're still there so long?

8 A. Yes.

9 Once I get on my level, certain staff know I  
10 got on my level and if they don't like you, they'll  
11 write you up for the littlest thing you do.

12 Q. What's the littlest thing in your mind you  
13 had ever done, that you have gotten written up for?

14 A. Talking to another staff.

15 Q. Talking bad, talking trash?

16 A. No. I hated one staff because he used to  
17 always talk trash to me.

18 Q. When you -- give me an example of talking  
19 trash, what kind of things would a staff -- a youth-  
20 care worker say to you?

21 A. "You're stupid" or "You'll never get out of  
22 here, this is your home."

23 Q. Did you do anything to get him to say that to  
24 you?

25 I mean, what would you do to get -- that

1 would cause the staff, as it were, to tell you that you  
2 are stupid and that you'll never get out of here?

3 A. When I go to my room --

4 Q. Uh-huh.

5 A. --be it somebody else's room or so. I want  
6 to go to school sometimes, I sit in the hallway and  
7 they call me stupid or something. That's what I need  
8 to get educated, because I'm already stupid enough.

9 Q. So, how does that make you feel, when people  
10 call you stupid?

11 A. Stupid.

12 Q. Yeah.

13 Does anyone try to build you up and help you  
14 get through your levels, counsel you, or show you  
15 what's expected, work with you?

16 A. Not really.

17 Q. What do you do in team, or whatever that is,  
18 Treatment group?

19 A. They just tell you what you have been doing  
20 for the past couple of days.

21 Q. When does that take place: once a week,  
22 twice a week?

23 A. Twice a week.

24 Q. What time?

25 Like after dinner or when?

1 A. 1:30, about 1:00 o'clock.

2 Q. Okay. And how long is Treatment?

3 A. About three hours, four hours.

4 Q. Okay. How many kids are in a group?

5 A. Twelve.

6 Q. So, the twelve kids sitting around, like from  
7 1:00 to 4:00 maybe, about three hours?

8 A. Yes.

9 Q. Okay. And you leads Treatment?

10 A. The case manager and the team leader.

11 Q. Okay. And what kinds of things are done in  
12 Treatment; is it like a positive peer group, does  
13 people build each other up?

14 A. No, it was just something, they will tell you  
15 what's you have been doing in the past couple of days  
16 and how many write-ups you got.

17 Q. Uh-huh. Does it feel positive or negative to  
18 you?

19 A. In a way, both.

20 Q. Okay, give us the positive?

21 A. Let's see positive. They try to ask you  
22 about your phone calls and stuff. They asked me about  
23 my phone calls. I told them I still haven't got my  
24 phone calls.

25 There was a time when I get -- I didn't speak

1 to my mother for about three months.

2 Q. Is that the longest time you went without  
3 contact with your family: three months?

4 A. About three or four.

5 Q. Three or four months. How come?

6 A. I told them I can't, my house isn't accept  
7 collect calls. And all they got to do is take me to  
8 the case manager's office, but they don't want to do  
9 that.

10 Q. How far away is the case manager's office?

11 Is it in the Pahokee facility?

12 A. Yes.

13 Q. What's it near?

14 A. Right down the hall.

15 Q. So, is it far; is it close?

16 A. It's close.

17 Q. So, you're -- is it because Ms. D [REDACTED] doesn't  
18 have a phone or she doesn't have a phone that accepts  
19 collect calls?

20 A. She got a phone, but it don't accept collect  
21 calls.

22 Q. Okay.

23 A. And normally for the people that don't -- the  
24 family that don't accept collect calls, they take them  
25 out to the case manager's, another phone, that calls



1 straight out.

2 Q. Uh-huh.

3 A. They don't want to do it.

4 Q. Okay. So what took three or four months to  
5 get you to a phone down the hall, what took them so  
6 long?

7 A. I don't know. I kept telling them.

8 "Later on, we'll do it later on. I can't do  
9 it now, I'm busy."

10 Q. Okay.

11 So, you were saying that that is a positive  
12 thing. You are sitting there in a group and I said  
13 tell us an example of something positive.

14 You said something positive is I didn't get  
15 the chance to talk to my mom for four months?

16 A. They asked me about it.

17 Q. But they would ask you about it, they would  
18 be at least concerned enough to ask?

19 A. Yeah. They asked me why.

20 Q. Why what?

21 A. I didn't make my phone call yet, and I told  
22 them why.

23 Q. You would say because my house hasn't  
24 collected it, or because they wouldn't take a collect -

25 -

1 A. --yeah, don't accept collect calls.

2 And they'll say, "Well, all you got to do is  
3 talk to your case manager about it at the Treatment  
4 meet and I talked to her and she would tell me she  
5 can't do it today.

6 And when I do see her the next day, she'll  
7 say she busy.

8 Q. All right.

9 When you do get to talk to your mom after  
10 three or four months, how long was that conversation  
11 that they allowed you?

12 A. Five minutes.

13 Q. And how often would you say you would get to  
14 talk to your mom generally, other than that great big  
15 gap?

16 A. Once every two months; two or three months.

17 Q. Once every two months; two or three months.

18 And how long would those phone calls be for?

19 A. Five minutes.

20 Q. Was your mom able to visit you in Pahokee?

21 A. Yes.

22 Q. Okay. How often?

23 A. She come see me once every -- let's see. She  
24 ain't come to see me about three months, but when I  
25 first came there, it was after two months, she seen me.

1 Q. So, you were in Pahokee for about two months  
2 before you had your first visit with your mom?

3 A. Yeah, I think so.

4 Q. All right. How many visits would you say  
5 you've had in this past year: more than five; more  
6 than ten?

7 A. No.

8 Q. What?

9 A. Three, three or four.

10 Q. And how long were those visits?

11 A. One hour.

12 Q. Okay.

13 A. It was two hours, but they cut the time out  
14 of one hour.

15 Q. When did they do that change?

16 A. Sometime, maybe about three -- two months  
17 ago.

18 Q. Did they do it just for you or did they do it  
19 for everybody at Pahokee?

20 A. Everybody at Pahokee.

21 Q. So, everybody gets an hour now?

22 A. No, two hours now.

23 Q. Oh, you mean it used to be?

24 A. They put it, it used to be two hours, then  
25 they cut the time down one hour, but now they put it

1 back up because everybody started complaining.

2 They come from so far, and they only get to  
3 see their children for one hour.

4 Q. Right.

5 Now when they get to see you guys, do you  
6 have a private visit or is it with other people?

7 A. With other people.

8 Q. Okay.

9 A. With a whole bunch of other people.

10 Q. In the same room?

11 A. Yeah.

12 Q. How has that been for you to have so little  
13 contact with your mom?

14 How has that made you feel?

15 A. It was hard for me to get through the program  
16 without speaking to my mom, because I don't know half  
17 of the people there.

18 It's hard, it's hard.

19 Q. You don't know half of the people where: at  
20 Pahokee?

21 A. I don't know none of them. Only except some  
22 of the class that come from ---

23 Q. Uh-huh. So, are you saying that not seeing  
24 your mom has made it harder for you to work your  
25 program?

1 A. Yes.

2 Q. Why is that?

3 A. I mean my mom would help me get through the  
4 program.

5 Q. Right.

6 A. I need to have to get through.

7 I don't have no influence really to get  
8 through the program. It's just, I got to help myself  
9 get through it.

10 Q. Uh-huh.

11 A. If I don't do that, I'm going to stay there.  
12 That's why I'm staying there now.

13 Q. Have you ever seen a psychologist, D [REDACTED]?

14 A. Yes.

15 Q. Do you know the name of the psychologist you  
16 saw?

17 A. I think Ms. Pelcyger.

18 Q. Okay, Gwynne Pelcyger? \*

19 A. Yeah.

20 Q. How often would you see her; how often would  
21 she counsel you?

22 A. Once a month.

23 Q. About how many minutes would she spend with  
24 you?

25 A. About ten minutes; five or ten minutes.

1 Q. Did she know about your slashings?

2 A. Yes.

3 Q. Would she talk to you about these slashings?

4 A. No. She put me on a suicide -- she asked me  
5 why I did it and I won't tell her, she'll just put me  
6 on a suicide watch.

7 Q. Why wouldn't you tell her, do you not trust  
8 her?

9 A. Yeah, I don't trust her. I trust nobody  
10 there.

11 Q. Yeah. Why wouldn't you tell her --

12 A. Except --

13 Q. --except who?

14 A. --that one person, Ms. Robinson.

15 Q. Ms. Robinson. She's been okay to you?

16 A. Yes.

17 Q. That's the only relationship you feel like  
18 you have made up there?

19 A. Yes.

20 Q. Okay.

21 How often do you get to see Ms. Robinson?

22 A. When I see her walking in a line or  
23 something, I taken a group of kids to lunch, so  
24 sometimes she'll come in my dorm and see me, or she'll  
25 work in my dorm sometimes --

1 Q. Uh-huh.

2 A. --the dorm I was in.

3 Q. Have you ever seen the staff encourage  
4 children to hit other children?

5 A. Let's see. I've seen certain staff say, "If  
6 you want to fight him, go ahead, you can fight him, I  
7 won't write you up."

8 They'll say, yeah, when I was in D-2, when  
9 you don't like somebody, you just tell the staff and  
10 that other person -- if the other person wanted to  
11 fight you, he'll let you on the basketball court.

12 Q. The staff will let you guys go on the  
13 basketball court?

14 A. Yes.

15 Q. And how long did your fight last?

16 A. I don't really know. I just know, I seen the  
17 two kids come out their room and go outside and come  
18 back in a couple of minutes later.

19 Q. Uh-huh.

20 And that's okay with the staff, if they want  
21 to go out and fight?

22 A. Yeah. I seen the one staff, he just stand  
23 there and laughed, laughed at the whole fight.

24 Q. Uh-huh.

25 A. And then when it started getting to violent,

1 he would just call it off.

2 Q. Do you feel respected by the staff there?

3 A. No.

4 Q. Do you feel that they care for you and they  
5 want to help you succeed in life?

6 A. No.

7 Q. Only Ms. Robinson?

8 A. Yeah.

9 Q. Okay. Other than your three weeks, twice a  
10 week drug group treatment, have you had any other  
11 treatment for either your alcohol problem or your  
12 psychological problems?

13 A. No.

14 They said maybe when Ms. Pelcyger come in, I  
15 got to talk to her about it.

16 She don't ask me about it, she just tell me  
17 what, she'll say, "Well, okay."

18 She'll ask me some more questions, but most  
19 of the time, she never gave me no answers.

20 Q. What kind of questions do you ask her that  
21 you wish you had answers for?

22 A. When I'm going to get out of suicide watch.

23 Q. Uh-huh.

24 A. When is she going to take me off?

25 Q. Uh-huh.



1 A. And that's it.

2 Q. Does she ask you questions about like how you  
3 feel?

4 MS. MARVIN: Objection. Leading, Judge.

5 THE HEARING OFFICER: Overruled.

6 THE WITNESS: Yeah. She asked me if  
7 I'm sad and I tell her that I don't know.

8 I said feel sad, but I don't know. They  
9 never put me on medication. I was on medication  
10 before I went there, but they'll never give it to  
11 me.

12 BY MS. OSBORNE:

13 Q. What medication were you on before you got  
14 there?

15 A. I think it was Prozac.

16 Q. Uh-huh.

17 A. Or Zolag, one of the other.

18 Q. And you never had any medication since you  
19 have there?

20 A. No.

21 Q. Have you requested it?

22 A. Yes.

23 I told my medicine make me feel a little bit  
24 happier.

25 Q. Uh-huh.

1           A.    And the psychiatrist say, "Well, it's not on  
2           the list." He looked in my files and it is not in my  
3           files that I took medication.

4           Q.    Did you also see a psychiatrist? You just  
5           mentioned that you must have.

6                   How often would you see a psychiatrist?

7           A.    I seen her two times; no, one time. No, I've  
8           seen two different psychologists.

9           Q.    Okay. James, I mean Demetrius, how many  
10          times have you been on a suicide watch since you have  
11          been at Pahokee?

12          A.    A lot, about ---

13          Q.    And you see a psychologist once a month for  
14          ten minutes?

15          A.    Yeah.

16                   I don't see him no more now. They don't come  
17          to me only if I ask one.

18          Q.    And you have seen a psychiatrist twice?

19          A.    Seen a psychiatrist once a month.

20                   I don't see her no more though, because I  
21          don't know ask for her.

22          Q.    Okay. Now, medically, how do they treat the  
23          scars on your arms, the slashings, what did they tell  
24          you or what do they give you?

25          A.    One time, they left me in the room when I did

1 it and the other times when they take me, they'll put  
2 some soap in my hand and tell me to wash it off.

3 And I go to the sink and wash it off.

4 They send me back to my dorm.

5 Q. Are you given anything?

6 A. No.

7 MS. OSBORNE: I don't have any other  
8 questions. Thanks.

9 CROSS EXAMINATION

10 BY MS. MARVIN:

11 Q. Can I call you D [REDACTED] or would you prefer  
12 Mr. D [REDACTED]?

13 A. Yes.

14 Q. You had said that you thought you were going  
15 to a drug program?

16 A. Yes.

17 Q. All right. I'm just going to need you to  
18 speak up a little bit.

19 A. Yes.

20 Q. And in fact originally you did go to a  
21 program problem -- a drug program, didn't you?

22 A. Yes.

23 Q. You went to Here's Help; right?

24 A. Yes.

25 Q. And you ran from Here's Help, didn't you?

1 A. Yes.

2 Q. And it was only after you already ran from a  
3 program that you went to Pahokee; correct?

4 A. Yes.

5 Q. Talking about you need to talk to your mom,  
6 does your mom work?

7 A. Yes.

8 Q. Okay. Is she here today?

9 A. No.

10 Q. Did you see her last night in Detention?

11 A. No.

12 Q. Did you see her Monday night in Detention?

13 A. No.

14 Q. Did you see her Tuesday night in Detention?

15 A. I wasn't here.

16 MS. OSBORNE: There's only visiting hours  
17 on Wednesday and Saturday, Number One.

18 Number Two, we couldn't reach the moms  
19 frankly and they didn't have phone access. I know  
20 that in Detention, since they've been here.

21 THE HEARING OFFICER: All right. I guess  
22 you can on Redirect.

23 MS. OSBORNE: All right. I'm just letting  
24 the Court know.

25 BY MS. MARVIN:

1 Q. So, I guess after what the Public Defender  
2 just said, I guess they couldn't even reach your mom by  
3 phone; right?

4 A. Or the people at home.

5 Q. Ms. Osborne just testified that they couldn't  
6 even reach your mom, is that correct?

7 A. I don't know.

8 Q. Okay. Now, you had talked about groups and I  
9 thought you had said that a lot of times you sleep  
10 during group, did you say that?

11 A. Yes.

12 Q. I'm sorry?

13 A. Yes.

14 Q. Yes, you sometimes sleep during group?

15 A. Uh-huh.

16 Q. At Pahokee, you have to follow rules, is that  
17 true?

18 A. Yes.

19 Q. Is it -- am I telling the truth when I say  
20 that you don't like following rules?

21 A. I wouldn't mind following the rules, but it's  
22 just, they change them, it's stupid rules.

23 Q. Prior to your -- at your commitment hearing,  
24 when your mom was there and the commitment manager was  
25 there, remember that?

1 A. Yes.

2 Q. You mom said you didn't follow rules before  
3 you went to Here's Help either; right?

4 MS. OSBORNE: We will object to the  
5 hearsay of the mom.

6 MS. MARVIN: Judge, well, this is -- some  
7 hearsay is coming in.

8 THE HEARING OFFICER: Well, certain hearsay  
9 is coming in, but the rule said kids couldn't --  
10 I mean that's, that's inadmissible hearsay if it  
11 is objected to.

12 Sustained.

13 BY MS. MARVIN:

14 Q. When you were living at home before you went  
15 to Here's Help, were there times when you would run  
16 away and your mom wouldn't even know where you were?

17 A. I left, but she knew where I was.

18 Q. How long would you leave for?

19 A. One day.

20 Not even one day, just let me see, just at  
21 night.

22 Q. Would you say that you were following the  
23 rules at home before you went to Here's Help?

24 A. No.

25 Q. D [REDACTED], you want to get out of Pahokee,

1 don't you?

2 A. Yes, a lot.

3 Q. Which program do you think would be good for  
4 you or do you think you don't need a program any more?

5 A. I don't think I need a program any more. I  
6 went at least fourteen months already without drugs. I  
7 think I can go the rest of my life without them.

8 Q. You think you can go the rest of your life.  
9 You had said that you thought Pahokee was a prison?

10 A. Yes.

11 Q. What is a prison?

12 A. What is a prison?

13 Q. Did someone tell you Pahokee was a prison?

14 A. The staff.

15 Q. Did anybody else tell you Pahokee was a  
16 prison?

17 A. Huh-uh.

18 Q. When -- did you -- Judge Peterson went to  
19 Pahokee; right?

20 A. I think so.

21 Q. Did you talk to Judge Peterson?

22 A. No.

23 Q. Now, you were kept in confinement for twenty-  
24 nine days, you said, when was that?

25 A. Sometime two months ago.

1 Q. Do you remember which month?

2 A. September, early this September.

3 Q. Okay. Do you remember what day?

4 A. Huh-uh.

5 Q. Do you remember which staff put you in  
6 confinement?

7 A. Yes.

8 Q. Which staff?

9 A. Mr. Cook.

10 Q. And why did you Mr. Cook say he put you in  
11 confinement?

12 A. Attempting to escape.

13 Q. Attempting to escape, okay.

14 Now, you had said sometimes at Pahokee you  
15 don't want to go to school?

16 A. Yes.

17 Q. But going to school is a rule at Pahokee?

18 A. Kind of, it's kind of rule. If you don't  
19 want to go. Now, if you don't want to go, they'll just  
20 send you back to the dorm.

21 Q. So, it's not a rule to go to school at  
22 Pahokee?

23 A. Yeah, it is.

24 But it's not that they really care if you go  
25 to school.



1 Q. Okay. Who doesn't care if you go to school?

2 A. The unit manager. If you don't want to go to  
3 school, you sit in the hallway and they come by and  
4 take you to the dorm and you sit on the basketball  
5 court or go to your room.

6 Q. Okay. When was the last time you didn't want  
7 to go to school?

8 A. Sometime two weeks ago, a week ago.

9 Q. Okay. And when you didn't want to go to  
10 school then, did somebody take you back to the dorm?

11 A. Yes.

12 Q. Who took you back to the dorm?

13 A. Mr. Hodge, the unit manager.

14 Q. Okay. Did he say anything to you when he  
15 took you back to the dorm?

16 A. No.

17 One time, when I was in a classroom, he came  
18 and pulled me out of the classroom anyway. When I was  
19 doing my school work, he came and pulled me out of the  
20 classroom and I wondered for what reason.

21 And he saw that I was bucking. I wasn't  
22 doing anything wrong. Even the teachers told him I was  
23 doing good. He still took me back to the dorm.

24 Q. Okay. Did you complain to anybody about  
25 that?

1 A. No.

2 Q. You've already been moved from one dorm;  
3 right?

4 A. Yes.

5 Q. Okay. Now this confinement room, is there a  
6 metal door?

7 A. Yes.

8 Q. Is there a window on the door?

9 A. Yes.

10 Q. How big is the window?

11 A. The same size as the windows here. Our cell  
12 windows.

13 Q. Like bigger than the statute book?

14 A. They're about this wide, about that long.

15 Q. Tell me how wide that is, because we need to  
16 do it for the record, can you say it's six inches, as  
17 big as your hand? I prefer that you tell me.

18 A. Yeah, bigger than my hand.

19 Q. Okay. And how big would you say your hand  
20 is?

21 A. About five inches wide.

22 Q. And how long?

23 A. I don't know how long.

24 Q. Okay. One foot, two feet?

25 A. I don't know what's ---

1 MR. ROSENTHAL: Just perhaps he can  
2 indicate with his hands and Counsel can make an  
3 estimate.

4 MS. MARVIN: Okay.

5 Do you want to show me how big?

6 THE WITNESS: About this long.

7 BY MS. MARVIN:

8 Q. Three feet.

9 MR. ROSENTHAL: That's about two and a  
10 half.

11 BY MS. MARVIN:

12 Q. Two and a half, three feet?

13 And when you are in confinement, is the door  
14 shut?

15 A. Yes.

16 Q. And when other kids are in confinement, their  
17 doors are shut?

18 A. Yes.

19 Q. Now, just a moment, Judge.

20 Who was your counselor at Here's Help?

21 A. Ms. Osborne. The case worker?

22 Q. The case worker?

23 A. Is Ms. Osborne.

24 Q. Ms. Osborne at Here's Help?

25 A. Yes.

1 Q. Did you like Ms. Osborne?

2 A. Not really.

3 Q. Why not?

4 A. She don't talk to me.

5 Q. How long did you stay at Here's Help?

6 A. What you just said? Who my case manager was  
7 at where?

8 Q. Here's Help.

9 A. Oh, Ms. -- I don't know her name.

10 Q. Okay.

11 A. I think it's Ms. Kathy.

12 MS. MARVIN: Just a moment, Judge.

13 BY MS. MARVIN:

14 Q. And so you believed her name was what?

15 A. Ms. Kathy.

16 Q. Ms. Kathy? Was Ms. Kathy supportive?

17 A. What you mean?

18 Q. Did she talk to you a lot?

19 A. Yes.

20 Q. Yes? How much did she talk to you?

21 A. Every day. Not counseling me, but "Hi."

22 Q. "Hi." How often would she counsel you?

23 A. Once every two days.

24 Q. Once every two days. And how long were the  
25 counselings?

1 A. Fifteen minutes, twenty minutes.

2 Q. Fifteen minutes or twenty minutes?

3 A. Yes.

4 Q. When you ran from Here's Help and they told  
5 you, you were going to go to another program, did you  
6 think you were just going to go to another program like  
7 Here's Help?

8 A. No.

9 Q. What type of program did you think you were  
10 going to go to?

11 A. I knew I was going to a program where I can't  
12 escape, where I can't run from.

13 Q. Somebody told you that?

14 A. No, that's what I thought.

15 Q. You figured that since you ran once, they're  
16 going to make sure you don't run again?

17 A. Yes.

18 Q. Ms. Osborne had said that you had been  
19 well-instructed as to what you could testify to and  
20 what you could not testify to.

21 I guess Ms. Osborne or Mr. Faber went over  
22 your testimony?

23 A. What you mean?

24 Q. Well, did they talk about what you would  
25 testify about?

1 A. I think so.

2 Q. You think so?

3 A. What is your question again?

4 Q. I'm sorry. Did they talk to you about the  
5 types of questions they would ask you?

6 A. Not that I remember.

7 Q. Not that I remember?

8 Did they come see you when you were in  
9 Detention?

10 A. Yes.

11 Q. How long were they there for?

12 A. About an hour.

13 Q. Okay. And they didn't talk to you about the  
14 questions they would ask you or what -- or what you  
15 would answer or what you would say?

16 A. Huh-uh.

17 Q. Okay.

18 MS. MARVIN: I have nothing else, Judge.

19 REDIRECT EXAMINATION

20 BY MS. OSBORNE:

21 Q. Other than Here's Help, is this your first  
22 commitment, the first place you have ever gone to  
23 Pahokee?

24 A. No.

25 Q. Where were you before?

1 A. My first program was Charter.

2 Q. Right.

3 A. And then my second program was Highland Park,  
4 a violation place. Then they recommended me to go to  
5 Level 6, drug rehab, and I ran from there.

6 Q. Okay.

7 A. And they sent me here.

8 Q. Those programs, Charter and Here's Help, that  
9 was because of your alcohol and other problems?

10 A. Yes.

11 Q. Okay.

12 When you were in confinement for attempted  
13 escape, tell the Judge again what was that attempted  
14 escape, what happened, what did you do?

15 A. Pressed the panel-control button that opens  
16 to the vessel. I walked out down into the vessel.

17 THE HEARING OFFICER: Into the what?

18 THE WITNESS: Vest, vessel, that's what  
19 they call it, the vest, like a hallway that leads  
20 to outside.

21 BY MS. OSBORNE:

22 Q. You mean that it leads to the outside, what  
23 outside, outside of the whole Pahoee complex or  
24 outside of the pods or where?

25 A. Outside of the pod.

1 Q. Okay.

2 A. But after that door, it's like, it's like  
3 four other doors.

4 Q. Okay, before you ever really get outside?

5 A. Yes.

6 Q. Okay.

7 So, were you trying to escape the facility?  
8 What were you trying to do when you pressed the panel-  
9 control button?

10 A. Trying to get someone to confinement, so I  
11 could get out of D-2.

12 Q. Okay. So you deliberately tried to get a  
13 custodian confinement because of what was happening in  
14 D-2?

15 A. Yes.

16 MS. OSBORNE: Okay. I don't have anything  
17 else.

18 MS. MARVIN: Judge, I have just one thing.

19

20

21

22

23



CERTIFICATE OF REPORTER

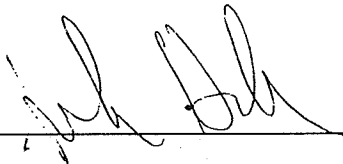
STATE OF FLORIDA )

COUNTY OF DADE )

I, JOHN E. HALTER, Reporter, hereby certify that the foregoing transcript consisting of 200 pages is a complete, true, and accurate transcript of the testimony indicated, held on November 13, 1997, in the matter of: In the Interest of: E.R., a child, Case No. 96-5493.

I FURTHER CERTIFY that this proceeding was reported by me, and that the foregoing transcript has been prepared by me or under my direction.

Dated:



JOHN E. HALTER-Reporter

My Commission expires May 29, 2001.